The Central Law Journal.

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CURRENT EVENTS.

REPORTERS AND PUBLISHERS.—Our readers are aware that in more than one instance controversies have arisen between the publishers of official reports of judicial opinions, and the enterprising "Reporters" in which are published periodically and almost as soon as delivered, the opinions of many of the Supreme Courts of the several States. In the following extract from a daily newspaper will be found a statement of the points at issue in one of these cases which have been submitted to the arbitrament of a Circuit Court of the United States.

"An unusual case is now pending in the United States Circuit Court at Leav. enworth, Kan., of considerable impor. tance to Iowa lawyers, and of interest to members of the bar in other States. It involves the ownership of the opinions of the Iowa Supreme Court. For some time past the Clerk of the Court has been furnishing the opinions as fast as delivered to the *Northwestern Law Reporter* published at Minneapolis. Bank & Bros., of New York, under contract with the State, publish the official copies of the Iowa reports, but their volumes are issued about a year and a half after the opinions are delivered. They found that the weekly publication of the opinions of the court was hurting the sale of these reports and so asked the Supreme Court to prevent their being furnished to any other parties. The court refused, claiming that their own opinions, as soon as delivered, were matters of public record and public property, and that the clerk should give them to any one who asked for them. The New York firm has now brought suit in the United States Circuit Court, before Judge Brewer, claiming that under their contract with the State they have the exclusive right to the Supreme Court opinions, and asking that the clerk be enjoined from giving them to any one else. If the injunction is granted, Iowa lawyers will not be able to get the opinions of their court until a year or more after they have been delivered."

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It is well settled that there is no copyright in the opinions of courts delivered in the regular course of judicial duty by the judges of courts. It was so decided by the Supreme Court of the United States in an old and well-considered case[1] in which the court says: "The court are unanimously of opinion that the reporter can have no copyright in the written opinions * * * * and the judges cannot confer on any such reporter any such right."

The question remains, however, whether the opinions, as the Supreme Court of Iowa holds, become public property and available for publication by anyone as soon as they may be delivered, or whether the State can by antecedent contract, limit the right of publication to certain persons who are entitled to publish in advance of anybody else. Without going into the legal questions, we may be permitted to remark that any contract of that character made by any State with a publisher, which tends to delay the publication of the opinions, or to enhance the price which the profession must pay for these necessary "tools of their trade," is in our judgment unfair to the community whose interest is involved, and to the legal profession, and to say the least, improvidently made.

As every person is presumed to know the law, and is held to answer to it accordingly, it is hardly reasonable to abridge his means of keeping up the large stock of information he is supposed to possess. He should certainly be entitled to cheap and early access to the opinions of the Supreme Court of his State, which, as far as they go, constitute the law of the State and bring it down to date. The policy of a State should be to encourage by all proper means, the diffusion of this kind of information. Any State would scorn to follow the bad example of the Roman Emperor who wrote his decrees in very small characters and hung the tablets on which they were written on high columns, so that people not being able to learn what was the law, should violate it unawares, and fall into the clutches of his minions.

[1] Wheaton v. Peters, 8 Pet. U. S. 591; see also Little v. Gould, 2 Blatchford, C. C. 165; Little v. Gould, 2 Blatchf. 362.

A WASHINGTON AT THE BAR.—Lawyers are not generally credited with possessing the virtue of being able to refuse things of value within their reach. In 1876 an Ohio lawyer might have refused the presidency of the United States and died immortal; but he did not possess sufficient greatness of soul to rise to the height of the occasion. We have now to record what seems almost incredible, that an English lawyer has thrown away the chance of grasping the great seal, rather than make a sacrifice of principle in regard to his political tenets. Sir Henry James belonged to the liberal party. His great reputation at the bar, and the fact that he had held the office of attorney general under Mr. Gladstone's former government placed him in the direct line of promotion to the highest judicial office in England, in the circumstances which surrounded Mr. Gladstone's government on its recent accession to power. Had Sir Henry James stood with the leader of his party and with the majority of the public men of that party in their coalition with Mr. Parnell and his party on the question of home rule for Ireland, there is not a doubt that he would have received the appointment of Lord Chancellor. This temptation, absolutely irresistible to most members of the legal profession, was put aside by him with as much dignity as Washington is supposed to have displayed when he resigned the command of his discontented army which desired to make him king, and received only the thanks of Congress for freeing his country and making it a nation. Sir Henry James differed with the leader of his party on a question of policy, and rather than sacrifice his principles he put aside the prospect of holding the highest judicial office in England, which prospect at his time of life is never likely to open itself before his vision again.

THE NEW LORD CHANCELLOR OF ENGLAND.—The office of Lord Chancellor accordingly fell naturally to the next in succession, Sir Farrer Herschell, who occupied the office of solicitor general under Mr. Gladstone's former government. He is, of course, raised to the peerage, and takes the title of Baron Herschell. He has worked his way to the top of the profession from its very bottom. His father was at his death the incumbent of a proprietary chapel at Kilburn. He had passed through several stages of religious doubt, and finally became a clergyman of the church of England. The son began his professional career as a contributor to the law newspapers. We trust that our young contributors will make a note of this fact, stop grumbling at the small compensation we are able to afford them, and go ahead fighting the good fight, not of course in the hope of finishing their course as Lord Chancellor, but possibly in the hope of finishing it as chief justice of some of our numerous appellate courts.

A CANADIAN BAR DINNER.—The bar at Toronto recently gave a dinner, at which "a gentleman of the Pennsylvania bar" made a speech in which he was not ashamed to say "that for ways that are dark and tricks that are vain, the American bar is peculiar;" upon which the *Canada Law Journal* reads a short sermon ending thus; "We sincerely hope that if we are indeed brethren to our American neighbors the link of affinity will be found to rest on something else than the darkness of our ways or the vanity of our tricks." We hope so too; and we are ashamed that any member of the American bar should have become so forgetful of the claims of truth and honor as to make such a statement at such a place concerning the bar of his own country. We suspect, however, that the hilarity of the feast lent indiscretion to his tongue, and we sincerely hope that he did not leave behind him a worse impression concerning the bar of America, than he may have acquired concerning that of Canada; for in another portion of the same article the *Canada Law Journal* says: "Much to the annoyance of everybody else, a handful of individuals present seemed to think there was nothing unseemly, nothing disrespectful, in treating the eight or nine Superior Court Judges, and the other gentlemen of seniority and position, who attended the dinner to a mingled assortment of popular songs, cries of 'rats,' 'how do ye do,' 'put 'em on the list,' and inarticulate noises, and senseless clamour of various descriptions. They probably considered that they were having a 'high old time.'"

NOTES OF RECENT DECISIONS.

CAPTURED AND ABANDONED PROPERTY—[ACTION AGAINST SECRETARY OF TREASURY FOR CONVERSION OF, UNDER R. S. U. S. § 1059.] FACT OF TAKING UNDER CLAIM MADE IN GOOD FAITH IS A BAR.—Under § 3 of the act of July 27, 1868, c. 276,[2] now embodied in § 1059, Rev. St., in an action of trover brought against a former secretary of the treasury of the United States, in a court other than the court of claims, to recover a sum of money as the value of certain cotton alleged to have been the private property of the plaintiff, the defendant pleaded that the cotton had, in an insurrectionary state, been taken, received, and collected, as captured or abandoned property, into the hands of a special agent, appointed by the defendant while such secretary, to receive and collect captured or abandoned property in that State, under section 1 of the act of March 12, 1863, c. 120,[3] that the provisions of that act were carried out in regard to the cotton as being captured or abandoned cotton; that all the acts done by the defendant respecting the cotton were done by him through such agent in the administration of, and in virtue and under color of, the act of 1863; and that, by force of § 3 of the act of 1863, and of § 3 of the act of 1868, the action was barred, and was exclusively within the jurisdiction of the court of claims. It appeared that the cotton had been taken, so far as the defendant was concerned, as being captured or abandoned property, under a claim made by him in good faith to that effect, in the administration of, and under color of, the act of 1863. *Held*, that, without reference to the question whether the cotton was in fact abandoned or captured property within the act of 1863, the fact that that it was taken as being such, under such claim made in good faith, was a bar to the action under the act of 1868 and § 1059 Rev. St.[4]

[2] 15 St. 243,
[3] 12 St. 820.
[4] Lamar v. McCullough, S. C. U. S., Oct. 26, 1885.

MASTER AND SERVANT — PASSENGER AND DRIVER OF HIRED CARRIAGE—COLLISION WITH TRAIN—NEGLIGENCE.—The interminable subject of contributory negligence received another exposition at the hands of the Supreme Court of the United States on the 4th January, 1886. Plaintiff had hired a carriage, was driven across the track of a railroad, and a collision was the result, by which the injury complained of was inflicted upon the plaintiff. The defense was contributory negligence on the part of the coachman who, it was insisted, was *pro hac vice* the servant of the passenger who had hired the vehicle, and that the negligence of the driver was to be imputed to the passenger and would operate to defeat his claim to damages. The view taken by the trial court, (the U. S. Circuit Court for New Jersey) was that unless the passenger assumed the control of the carriage and its driver, and gave special directions as to the mode and manner in which the coachman should drive, he was not responsible for his acts or negligence. This view was sustained by the Supreme Court of the United States (Mr. Justice Field) the court declining to follow the case of Thorogood v. Bryan.[5] In that case a passenger in an omnibus was fatally injured by an accident which occurred from the negligence of the driver of that omnibus concurring with the negligence of the driver of another omnibus the property of the defendant. The court held in that case that the plaintiff's intestate by selecting the particular omnibus in which he was a passenger, was "so far identified with the carriage * * * that want of care on the part of the driver will be a defense of the driver of the carriage which directly caused the injury."

This case was followed in England by the case of Armstrong v. Lancashire etc. R. R. Co.,[6] but has been doubted by high authority in English law courts and openly disregarded in courts of admiralty.

The Supreme Court of the United States holds that the rule laid down on this subject in England is unjust and quoting a New York case,[7] says:"—that to attribute to the passenger the negligence of the agents of the

[5] 8 C. B. 114.
[6] L. R. 10 Ex. 47, 52.
[7] Chapman v. New Haven R. R. Co., 19 N. Y. 341.

company, and thus bar his right to recover, was not applying any general rule of law, but was framing a new exception based on fiction and inconsistent with justice."

Mr. Justice Field supports the ruling by citations of many American decisions.[8]

[8] Dyer v. Erie R. R. Co., 71 N. Y. 228; Transfer Company v. Kelly, 36 Ohio St. 86; Wabash etc. Co. v. Shacklett, 105 Ill. 364; Danville etc. Co. v. Stewart, 2 Metcf. (Ky.) 119; Louisville etc. R. R. Co. v. Case, 9 Bush. 728; Cuddy v. Horn, 46 Mich. 596; Tompkins v. Claystreet etc. Co., 4 W. Coast Rep. 537.

NAMES OF PERSONS.

II.

Identity of Names in Criminal Cases.—Generally, identity of name and person is not presumed in criminal cases, from mere proof of that fact, where the evidence would overthrow the presumption of innocence; and before there can be a conviction some other evidence tending to prove identity must be produced. Thus upon an indictment for bigamy, it was proven by a person who was present at the prisoner's second marriage, that the woman was married to him by the name of Hannah Wilkinson, the name laid in the indictment, but there was no other proof that the woman in question was Hannah Wilkinson; and the court held the evidence insufficient to sustain a conviction.[1] Other cases hold to the same rule.[2] These cases, however, are flatly contradicted in principle by cases from other courts. Thus in Missouri identity of name, with an alias added, was held sufficient to raise a presumption of identity of person.[3]

Identity of Names and Persons may be Proven.—The identity of the name and person may always be proven;[4] and so may two names be proven to relate to the same person.[5] In the case of commercial paper answers made by a person applied to as the maker or drawee, on demand of payment, admitting himself to be the person supposed, are admissible and are presumptive evidence that the person of whom the demand was made was the maker or drawee.[6] In such instances very slight evidence is sufficient,[7] such as the statement of fact of a demand by the notary in his official certificate.[8] Where the two names are different, extrinsic evidence is not only competent but necessary, even in the case of a judgment;[9] and this is true in pleading *res adjudicata*.[10]

Circumstances may be Shown to Prove or Disprove Identity.—Circumstances arising out of the transaction in which the identity of names or persons are sought to be proven, may be shown to prove or disprove identity. Thus in an action of ejectment to recover a lot of land in the military tract of New York, on the demise of P. S., the plaintiff produced in evidence a patent to P. S., issued in pursuance of an act of the Legislature carrying into effect certain provisions promising bounty lands to soldiers of the Revolutionary war, with certain other evidence; but the defendant proved that there was another person in existence of the name of P. S., who was too young during that war to be a soldier, and that the lessor of the plaintiff himself had not been a soldier, and upon this he, the defendant recovered.[11] So evidence that a woman was formerly known by the maiden name mentioned in the marriage register, and that the parties cohabited as man and wife, is sufficient proof of identity.[12]

Names in Deeds.—If the name of a grantee in a deed is applicable to two or more persons, or two or more persons are generally known by the same name, evidence is admissible to show which one was intended as the

[1] Drake's case, 1 Len. C. C. 25. A discrepancy may be explained. Regina v. Gooding, Carr and M. 297; 12 C. L. Rep. 165.

[2] Wedgewood's case, 8 Greenl. 75, Evans v. State, 62 Ala. 6.

[3] State v. Kelsoe, 76 Mo. 505. See People v. McGilver, 6 W. C. Rep. 490.

[4] State v. Wallace, 9 N. H. 515; Queen v. Waver, L. R. 2 C. C. Res. 85; s. c. 7 Moak. 323.

[5] Johnson v. State, 46 Geo. 269; Com. v. Gale, 11 Gray, 320; State v. Dresser, 54 Me. 569; State v. Homer, 40 Me. 438.

[6] Hunt v. Maybdee, 7 N. Y. 266; See Howard v. Holbrook, 9 Bosw. 237; s. c. 23 How. Pr. 64.

[7] Staenback v. Bank of Virginia, 11 Grat. 260.

[8] Elliott v. White, 6 Jones (N. C.) 98; Dickerson v. Turner, 12 Ind. 223; Phillipi v. Poindexter, 18 Ala. 579, see however, Drumm v. Bradfute, 18 La. Ann. 680; Ostego Co. Bank v. Warren, 18 Barb. 290; Gardner v. Bank, 2 Swan. 420.

[9] Evans v. Patterson, 4 Wall, 231; Stevelie v. Read, 2 Wash C. C. 274; Berber v. Kerzinger, 23 Ill. 346; Williams v. Bankhead, 19 Wall. 570.

[10] Cases last cited and Greely v. Smith, 3 Woodb. and M. 236.

[11] Jackson v. Goes, 13 Johns. 518, see Jackson v. Stanley, 10 Johns. 133.

[12] State v. Wallace, 9 N. H. 515.

grantee.[13] If father and son bear the same name, unless explained, the grant will be taken as one to the father.[14] If the claimant's name and the one stated in the deed are substantially the same (*idem sonans*) in sound but variant in spelling, the deed is good and oral evidence of identity is unnecessary.[15] So if the grantee is known by two or more names, a grant to him by one name is valid; and evidence is admissible to show that he was so known.[16] But if the grantee is wrongly named, at law the grant is void and parol evidence is not admissible to show who was intended to be the grantee. This rule probably arose from the sacredness with which the early common law regarded all sealed instruments in not permitting their contents to be varied or contradicted.[17] Of course the omission of the middle name, or its initial, does not affect the deed.[18] So parol evidence is inadmissible to show that a lease executed in the name of, and reserving rent to one person, was intended for the benefit of another.[19] A conveyance to a partnership by the firm name, in which only the surnames of a part of the firm are named is good, and those named hold the land for themselves and their co-partners as trustees.[20] In another case it was held that the members of the firm could be shown in order to give the deed its full force.[21] So a deed to a designated class without naming them is good; as to A., "and her children."[22] One who signs and seals a deed by a fictitious name, is bound by it, and parol evidence is admissible to show that fact; this is upon the principle that the grantor shall not be allowed to take advantage of his own wrong.[23] So a slight variance between the grantor's name as set out in the granting clause and as signed and acknowledged, so long as they are *idem sonans*, will not prevent its introduction in evidence without parol evidence to explain it.[24] In Illinois, however great the variance, they are presumed to be the same person.[25] So where a married woman signed a mortgage by her Christian name only, her name appearing in full in the premises thereof as well as in the certificate of acknowledgement, it was held a sufficient signing of the name.[26] These cases, however, must be read in the light of the fact that courts of equity afford relief where a mutual mistake has been made by the parties.

Names in Wills.—Much more leniency is allowed in the construing of wills to ascertain who is the devisee. Thus if two persons have the same name parol evidence is admissible to show the one intended by the testator, or even when there has been a mistake in the Christian name.[27] So the omission of a name may be supplied from the context of the will; which omission may be aided by the subject and other persons referred to.[28] If the legatee is described by his surname only as the son of one whose surname is also only given, parol evidence may be given to show who the legatee is;[29] but if there is a blank of both names the omission cannot be supplied, for that would be a bequest by parol.[30]

[13] Cheney's Case, 5 Co. Rep. 68; Jackson v. Goes, 13 Johns. 518; (a case of a patentee); Jackson v. Stanley, 10 Johns. 133; Humble v. Glover, Cro. Eliz. 328; Jackson v. Hart, 12 Johns. 77. The person claiming under the deed, it is said, must show that he is the person intended. Grand Gulf, etc. Co. v. Bryan 8 S. & M. 234.

[14] Padgett v. Lawrence, 10 Paige 170; Stevens v. West, 6 Jones (N. C.) L. 49.

[15] Jackson v. Hart, 12 Johns. 77; Jackson v. Cody, 9 Cow. 140; Lyon v. Kain, 36 Ill. 362.

[16] Jackson v. Hart, 12 Johns. 77.

[17] Jackson v. Hart, 12 Johns. 77; Jackson v. Boneham, 15 Johns. 226; Babcock v. Pettibone, 12 Blatchf. 354; Humble v. Glover, Cro. Eliz. 328, (this last case and the early cases confine this rule to the Christian name alone. Co. Litt. 3 *a*; Bacon's Maxims, 107); Mayelstone v. Ld. Palmerston, 1 Mo. and M. 6.

[18] Games v. Dunn, 14 Pet. 322; Schofield v. Jennings, 68 Ind. 232; S. P. McDonald v. Morgan, 27 Tex. 503; Dunn v. Games, 1 McLean, 321.

[19] Jackson v. Foster, 12 Johns. 488.

[20] Beaman v. Whitney, 20 Me. 413.

[21] Murray v. Blackledge, 71 N. C. 492.

[22] Hamilton v. Pitcher, 53 Me. 334.

[23] Nixon v. Cobleigh, 52 Ill. 387.

[24] As "Trigher" in granting clause and "Trightt," as signed. Houx v. Batteen, 68 Mo. 84.

[25] Lyon v. Kain, 36 Dill. 362; Middleton v. Findla, 25 Cal. 76, see Colton v. Seavey, 22 Cal. 496; Tustin v. Faught, 23 Cal. 238; Bridges v. Layman, 31 Ind. 384; Jones v. Martin, 5 Blackf. 351; Hopper v. Lucas, 86 Ind. 43. A judgement against "Belden B." was held to be good as against "Jonathan Belden B. Baker v. Bessey, 73 Me. 472.

[26] Zann v. Haller, 71 Ind. 136; s. c. 36 Am. Rep. 193.

[27] Cheyney's case, 5 Co. 68 *b*; Ulrich v. Litchfield, 2 Atk. 373; Parsons v. Parsons, 1 Ves. Jun. 266; Thomas v. Thomas, 6 T. R. 671; Brown v. Thompkins, 49 Md. 423; Dunham v. Averill, 45 Conn. 61.

[28] Humphreys v. Humphreys, 2 Cox. 186; Harrison v. Harrison, 1 R. & My. 72; s. c. Tam. 273; Tompkins, v. Tompkins, 19 Ves. 126, note; Garvey v. Hibbert, 19 Ves. 125.

[29] Price v. Page, 4 Ves. 680; Abbot v. Massie, 3 Ves. 148.

[30] Baylis v. Attorney-General, 2 Atk. 239; Hunt v. Hort, 3 Br. C. C. 311.

A devise to A. of C. and then to A. of D., and then a third one to A. without saying to which A., is void unless it can be determined from the will which one is meant; and parol evidence is inadmissible to show the one intended; for this is a patent ambiguity not explainable by parol evidence.[31]

Names in Judgment.—"The weight of authority is, that if the writ is served on the party by a wrong name, intended to be sued' and he fails to appear and plead the misnomer in abatement, and suffers judgment to be obtained, he is concluded, and in all future litigation may be connected with the suit or judgment by proper averments."[32] When such averments are made and proven the person intended to be affected by the judgment is concluded thereby the same as is expressly designated by his correct name.[33] If a name is omitted in the formal entry, reference may be had to the papers in the case to ascertain the actual name.[34] Identity of name *prima facie* establishes identity of the parties.[35] The judgment failing to designate the names of the parties, the court has the power to amend it by inserting the proper names.[36] So the rule of *idem sonans* applies to judgments; and in such instances "identity of sound is a surer designation of the names of persons than identity of orthography." And in ascertaining the identity of sound the prevailing usage in pronunciation in the *locus in quo* will prevail. Thus in Pennsylvania "Bobb" for "Bubb" was allowed to prevail as against an innocent party; and the court said; "In examining titles, the searchers must take notice of the different ways of spelling the same name. But if the spelling is so entirely unusual that one would not be expected to think of it, then it would not impart notice."[37] But the searcher is not bound to know the foreign pronunciation, nor look under a letter different from that required by the English method of spelling; as "Yoest" for "Joest," although in German pronounced the same.[38] Docketing the judgment in the name of "A. Jones" is sufficient notice of a judgment against "Abel Jones" where the defendant uniformly writes his Christian name by his initials and there is no other "A. Jones" in the country.[39] A judgment taking against a son who bears his father's name need not designate him as "junior" in order to charge strangers with notice of the correct person.[40] If a statute requires the name to be set out in the index so as to charge third persons with notice, the full Christian and surnames must be set out, else there is no duty to take notice from the record alone; as in the case of a firm setting out "Green, Wilson and Mitchell."[41] If suit is commenced in the maiden name of the plaintiff and while pending she marries, the complaint may be amended; but if judgment is thus rendered it is good.[42] And this same rule is applicable to the defendant. So where suit was by one Christian name and judgment by another, it was held a valid judgment, the plaintiff being as well-known by one name as another, and no objection having been made at its rendition.[43] These general rules are applicable to criminal cases.[44] So a judgment in favor of the plaintiff by an assumed name is valid;[45] and the same is true if it is rendered against the defendant only by the initial of Christian name used in connection with his surname.[46]

Name in Warrant.—A warrant to arrest a person must set out his name, else it will be void, and an arrest under it cannot be justified.[47] If the name be unknown then the warrant must clearly indicate on whom it is

[31] Fox v. Collins, 2 Eden, 107.

[32] National Bank v. Jaggers, 31 Md. 38; Crawford v. Satchwell, 2 Etra. 1218; Smith v. Patten, 6 Taunt. 115; Oakley v. Giles, 3 East, 168; Guinard v. Heysinger, 15 Ill. 288; Smith v. Bowker, 1 Mass. 76; Ins. Co. v. French, 18 How. 409; Bloomfield R. R. Co. v. Burgess, 82 Ind. 83.

[33] Barry v. Carothers, 6 Rich. 331.

[34] Wilson v. Collins, 11 Humph. 189.

[35] Garwood v. Garwood, 29 Cal. 514; Thompson v. Manrow, 1 Cal. 428.

[36] Leviston v. Swan, 33 Cal. 480; Meyer v. Fegaly, 39 Pa. St. 429.

[37] Myer v. Fegaly, *supra*,

[38] Heil & Lauer's Appeal 40 Pa. St. 453; Buchan v. Sumner, 2 Barb. Ch. 197.

[39] Jones Estate, 27 Pa. St. 336.

[40] Bidwell v. Coleman, 11 Minn. 78.

[41] Tne York Bank's Appeal, 36 Pa. St. 458; Ridgway & Co's Appeal 15 Pa. St. 177; Contra, Hibberd v. Smith, 50 Cal. 511.

[42] Waltz v. Waltz, 84 Ind. 403; Abshire v. Mather, 27 Ind. 381.

[43] Scott v. White, 71 Ill. 287.

[44] State v. Knowlton, 70 Me. 200.

[45] Clark v. Clark, 19 Kan. 522; Bridges v. Layman, 31 Ind. 384; Jones v. Martin; 5 Blackf. 351.

[46] Hopper v. Lucas, 86 Ind. 43; Connor v. Loehr, 27 Ind. 136.

[47] Brady v. Davis, 9 Geo. 73; Alford v. State, 8 Tex. App. 545; Griswold v. Sedgwick, 6 Cow. 465; Scott v. Ely, 4 Wend. 555; Mead v. Haus, 7 Con. 332; Shadgett v. Clipson, 8 East 328.

to be served, by stating his occupation, personal appearance and peculiarities, the place of his residence, and other circumstances so he can be identified; the chief point aimed at is to so describe him so that he can be identified, and if that is obtained it is sufficient.[48] A warrant for "A. and his associates" is void as to the latter.[49] A fictitious name cannot be assigned to the accused in lieu of his real name, nor can the officer charged with the execution of the warrant interpolate in it the true name of the accused. Neither can a warrant be held valid because the person arrested under it, though described neither by name nor otherwise, proved to be the person against whom the complaint was intended.[50] And a warrant to search the premises of B. P. Tuell was held not to warrant a searching of the premises of Benjamin P. Tuell.[51] If the warrant omit the Christian name of the accused it will be void unless some excuse therefor is shown and a description of the accused be added.[52]

Arrest on Civil Process.—In the case of arrest on civil process the same rules are applicable; and in this, like in a criminal warrant, the exact person intended must be arrested; for similarity or identity of name will not excuse him in arresting the wrong person. And it would seem that if there are several persons of the same name, and the officer has no knowledge, or means of acquiring knowledge of the right person he may return the process unserved, stating the reasons for his action.[53] An arrest of the actual person desired, on process wherein he is wrongly named is an illegal act, and the officer cannot justify his act.[54] Final process, however, following the name set out in the judgment, although the wrong name of the person to be arrested, will justify the arrest; for the person to be arrested is concluded by the name in which judgment was rendered against him. In such a case the arrested party is in fault for not having plead the misnomer and thus had judgment rendered against him in his right name.[55]

Names on Ballots.—It often happens that the name upon the ballot does not exactly express the intention of the voter. There the surname may alone be used, or the surname with the initials of the Christian name. In all such cases those counting the ballots must take into consideration who were the candidates before the people, whether other persons of that name reside in the voting district from which the officer was to be chosen, and if so whether they were eligible or had been named for the office, if the ballot was printed imperfectly how it came to be so; and in case of a contest evidence of such facts is admissible for the purpose of showing that the imperfect ballot was meant for a particular candidate, unless the name is so different that to thus apply it would be to contradict the ballot itself; or unless the ballot is so imperfect that it fails to show any intention whatever.[56] Three ballots cast for "D. M. Carpenter," M. D. Carpenter," "M. T. Carpenter," and "Carpenter" were counted for "Mathew H. Carpenter."[57] The rule of these cases, however, have not always met with favor, especially in Michigan[58] and Maine[59] although the Michigan rule has been considerably shaken in that State.[60]

Idem Sonans.—Several references have already been made to names *idem sonans*. The general rule in law upon this subject has been laid down as follows: "Names which sound alike are held, in law, to be the same, though they may be spelled by different letters."[61] A question of *idem sonans* usually

[48] Com. v. Crotty, 10 Allen, 403; Alford v. State, 8 Tex. App. 545; See Melvin v. Fisher, 8 N. H. 406; Scheer v, Keown, 29 Wis. 586.

[49] Wells v. Jackson, 3 Munf. 458.

[50] Alford v. State, 8 Tex. App. 545.

[51] Tuell v. Wrink, 6 Blackf. 249.

[52] Rex v. Hood, 1 M. & M. 281.

[53] Dalton on Sheriffs, 112, 113; Murfree on Sheriffs, sec. 155.

[54] Shadgett v. Clipson, 8 East 328, see Cole v. Hindson, 6 T. R. 234; Price v. Harwood, 3 Camp. 108; Scandover v. Warne, 2 Comp. 270; Dunston v. Patterson, 3 Jurist (N. S.) 982; Kelly v. Lawrence, 10 Jurist (N. S.) 636; Wilks v. Larch, 2 Taunt, 399; Waterbury v. Mather 16 Wend. 611.

[55] Crawford v. Satchwell, Strange, 1218; see Fisher v. Magnay, 5 M. & G. 779.

[56] Const. Lim. 611; McCrary on Elections, 296; Attorney General v. Ely, 4 Wis. 430; People v. Ferguson, 8 Cow. 102; People v. Cook, 14 Barb. 259; People v. Prose, 27 N. Y. 64.

[57] Attorney General v. Ely, *supra*; S. C. Brightleys' Election Cases, 258.

[58] People v. Tisdall, 1 Doug. 65; People v. Cicotte, 16 Mich. 283.

[59] Opinion of the Justices, 64 Me. 596.

[60] People v. Kennedy, 37 Mich. 67. Following the general rule, see State v. Gates, 43 Conn. 533; Talkington v. Turner, 71 Ill. 234; Clark v. Robinson, 88 Ill. 498.

[61] Schofield v. Jennings, 68 Ind. 239. See statement

arises upon a point made whether there is any variance as laid in the pleading or other instrument and the proof. Lord Mansfield laid down the rule generally accepted on this point as the true one, viz: "where the omission or addition of a letter does not change the word so as to make it another word, the variance is not material." [62] In another case it was said "If names may be sounded alike without doing violence to the power of the letter found in the variant orthography, then the variance is immaterial." [63] Chitty says: "If two names are, in original derivation, the same, and are taken promiscuously in common use, though they differ in sound, yet there is no variance." [64] Of this principle Bishop has said: "And this proposition comes from the fact, that, when one hears a particular form of the name spoken, or sees it written, his memory is impressed likewise with the other, and he employs the one or the other according to fancy or convenience, just as he does any other synonymous terms in the language." [65] An early authority gives us illustrations of this rule, viz: Piers and Peter have been held the same in pleading; because by some acts of Parliament it appears they "have been used promiscuously, as signifying the same person. So Saunders and Alexander, Jane and Joan, Jean and John, Garret, Gerat, and Gerald, are the same names." [66] And the same is true of Wilkerson and Wilkinson, Robinson, Robertson, and Roberson, Hudson and Hutson; [67] Thomas and Tom; [68] Jo and Joseph; [69] Mary and Polly; [70] Harry and Henry, [71] Sarah and Sally, [72] Bart and Bartholemew, [73] Susan and Susannah, [74] Barent and Barnard, [75] Seymour and Seigmund, [76] Edward and Edmund. [77]

Examples of names held to be Idem Sonans. —Michael and Michaels; [78] McInnis and Mc Ginnis; [79] Whyneard and Winyard, pronounced Winnyard; [80] Blackenship and Blankenship; [81] Edmindson and Edmundson, [82] Conly and Connolly; [83] Deadema and Diadema; [84] Segrave and Seagrave; [85] Chamble and Chambless; [86] McLaughlin and McGloflin; [87] Anthron and Antrum; [88] Benedetto and Beniditto; [89] Usrey and Usury; [90] Petrie and Petris, [91] Juli and Julee; [92] McNicole and Mc Nicoll; [93] Havely and Haverly; [94] Danner and Dannaher; [95] Thonpson and Thompson; [96] Droun and Drown; [97] Keen and Keene; [98] Chin Chan and Chin Chang; [99] Faster and Foster; [100] Mary Etta and Marietta; [101] Chatam and Chatham; [102] Whitman and Whiteman; [103] Janury and January; [104] Preyer and Prior; [105] William and Williams; [106] February and Februry; [107] Coburn and Colburn; [108] Cuffy and Cuffee or Cuff: [109] Fourai and Forrest: [110] Chicopee and Chickopee: [111] Read and

of a queer incident by reason of names *idem sonans* in Crim. L. Mag. 384.

[62] Rex v. Beech, Cowp. 229; s. c. 1 Dong. 194; Lofft, 785; 1 T. R. 237, note 1; Leach. 133, taken, he says, in Reg v. Drake, 2 Salk. 660.

[63] Ward v. State, 28 Ala. 53; White v. State, 69 Ind. 273; Black v. State, 57 Ind. 109.

[64] 1 Chit Crim. L. 203, referring to 2 Rol. Abr. 135; Bac. Abr. Misnomer.

[65] 1 Bish. Crim. Proc. (2d.) sec. 689.

[66] Bac. Abr. Misnomer A.

[67] Wilkerson v. State 13 Mo. 91.

[68] *In re* Wolvertion's Est. L. R. 7 Ch. Div. 198.

[69] Com. v. Baldwin, 103 Mass. 210.

[70] Sowle v. Sowle, 10 Pick. 376.

[71] Lessee of Gordon v. Holliday, 1 Wash. C. C. 289; Garrison v. People, 21 Ill. 535.

[72] Shelburne v. Rochester, 1 Pick. 470.

[73] Curtis v. Mars, 29 Ill. 508.

[74] Trimble v. State, 4 Blackf. 435.

[75] River v. Marrs, 25 Ill. 315.

[76] Scholes v. Ackerland, 13 Ill. 650.

[77] Flood v. Randall, 72 Me. 439.

[78] State v. Houser, Busbee 410.

[79] Barnes v. People, 18 Ill. 52.

[80] Rex v. Foster, R. & R. 412.

[81] State v. Blankenship, 21 Mo. 504.

[82] Edmundson v. State, 17 Ala. 179.

[83] Fletcher v. Conly, 2 Gr. (Ia.) 88.

[84] State v. Patterson, 2 Ind. 346.

[85] Williams v. Ogle, 2 Str. 889.

[86] Ward v. State, 28 Ala. 53.

[87] McLaughlin v. State, 52 Ind. 476.

[88] State v. Scurry, 3 Rich. 68.

[89] Ahitbol v. Beniditto, 2 Taunt. 401.

[90] Gresham v. Walker, 10 Ala. 370.

[91] Petrie v. Woodworth, 3 Cai. 219.

[92] Point v. State, 37 Ala. 148.

[93] R. v. Wilson, 2 C. & K. 527.

[94] State v. Havely, 21 Mo. 498.

[95] Gahan v. People, 58 Ill. 160.

[96] State v. Wheeler, 35 Vt. 261.

[97] Com. v. Woods, 10 Gray, 477.

[98] Com. v. Riley, 1 Thach. Cr. Cas. 67.

[99] Wells v. State, 4 Tex. App. 20.

[100] Foster v. State, 1 Tex. App. 533.

[101] Goode v. State, 2 Tex. App. 520.

[102] Roth v. State, 4 Tex. L. Jr. 393.

[103] Henry v. State, 7 Tex. App. 388.

[104] Hulto v. State, 7 Tex. App. 44.

[105] Page v. State, 61 Ala. 16.

[106] Williams v. State, 5 Tex. App. 226.

[107] Witten v. State, 4 Tex. App. 70.

[108] Colburn v. Bancroft, 23 Pick. 57.

[109] State v. Farr, 12 Rich. 24.

[110] State v. Timmens, 4 Minn. 331.

[111] State v. Desmarteau, 16 Gray, 15.

Reed: [112] Fayelville and Fayetteville,[113] Currier and Kiah: [114] Lebering and Lebrun or Lebring; [115] Rennoll and Rennolls; [116] Gigger and Jiger,[117] Giddings and Gidings or Gidines; [118] Anny and Anne; [119] Symonds and Symons; [120] Hinsdale and Hinsdall; [121] Shapcott and Shipscott; [122] Kay and Key; [123] Geesler and Geissler; [124] Marres and Mars; [125] Langford and Lankford: [126] Burdet and Boudet or Boredet: [127] Finnegan and Finegan: [128] Kamberling and Kimberling: [129] Little and Lytle: [130] Adanson and Adamson: [131] Conn and Corn: [132] Beckwith and Beckworth: [133] Hutchinson and Hutcheson: [134] Gardiner and Gardner,[135] Bennaux and Beneux: [136] Susan an Susannah: [137] Rae and Wray: [138] Bryon and Bryan: [139] Sofia and Sofira: [140] Philip and Pilip: [141] T. C. Lucky and C. C. Lucky: [142] M. "and" C. and M., C. ("and" left out): [143] Trobridge and Trowbridge: [144] McDonald and McDonell: [145] Meyer, Meyers and Mayer: [146] H. Hailey and Hiron H. Hailey where statute was in force allowing a statement of the initials of Christian name to be sufficient: [147] Charlestown and Charleston: [148] Leaphardt and Leaphat: [149]

Examples of names held not to be Idem Sonam.—Sedbetter and Ledbetter; [150] Prison and Brisson; [151] Shutliff and Shirtliff; [152] Burrill and Burrall; [153] Tabart and Tarbart; [154] Shakespeare and Shakepear; [155] McCann and McCarn; [156] Donald and Donnell; [157] Sensenderfer and Sensenderf; [158] Melvin and Melville; [159] Franks and Frank; [160] Smith and Wesson, and Smith and Weston; [161] Fitz Patrick and Fitzpatrick; [162] Lindly and Lindsey; [163] Gabriel Carter and Carter Gabriel; [164] Comyns and Cummins; [165] McCoskey and McKaskey, McKlaskey or McKloskey; [166] Della and Dellia; [167] Owen and Orrin; [168] Jacques and Jakes, [169] Jeffery an Jeffries; [170] May and Mary; [171] Barnep and Barnap; [172] Amann and Ammon; [173] Hemessey and Hennessey; [174] Saunders and Launders; [175] King and Ring; [176] Abie and Avie; [177] Otha and Oatha; [178] Helen and Ellen; [179] William and Wilhelm; [180] Kristler and Kladder; [181] Mathews and Mather; [182]

[112] State v. Pott, 4 Halst, 32.
[113] U. S. v. Hinman, 1 Baldw. 292.
[114] Tibbetts v. Kiah, 2 N. H. 557.
[115] Kentland v. Admr., 2 Wash. C. C. 201.
[116] ——— v. Rennolls, 1 Chitty, 659.
[117] Com. v. Jennings, 121 Mass. 47.
[118] State v. Lincoln, 17 Wis. 579.
[119] State v. Upton, 1 Dev. 513.
[120] Allen v. Symonds, 4 Mod. 347.
[121] Meredith v. Hinsdale, 2 Cai. 361.
[122] Bowen v. Shapcott, 1 East. 542.
[123] Dickinson v. Bower, 16 East. 112.
[124] Cleveland v. State, 20 Ind. 444.
[125] Com. v. Stone, 103 Mass. 421.
[126] State v. Mahan, 12 Tex. 283.
[127] Aaron v. State, 37 Ala. 106.
[128] People v. Mayworm, 5 Mich. 146.
[129] Houston v. State, 4 Gr. (Ia.) 437.
[130] Lytle v. People, 47 Ill. 422.
[131] James v. State, 7 Blackf. 325.
[132] Moore v. Anderson, 8 Ind. 19.
[133] Stewart v. State, 4 Blackf. 171.
[134] State v. Stedman, 7 Port. (Ala.) 495.
[135] Rector v. Taylor, 7 Eng. (Ark.) 128.
[136] Beneux v. State, 20 Ark. 97.
[137] State v. Johnson, 67 N. C. 55.
[138] Vance v. Wray, 3 U. L. L. J. 6[illegible].
[139] Tyser v. Bryan, 2 Dowl. 640.
[140] Sometimes called by both names. Owen v. State, 7 Tex. App. 329. See Burgamy v. State, 4 Tex. App. 72.
[141] Taylor v. Rogers, 1 Ala. 197.
[142] Brown v. State, 32 Tex. 134.
[143] McAllister v. Clark, 86 Ill. 237.
[144] Buhl v. Trowbridge, 42 Mich. 44.
[145] McDonald v. People, 47 Ill. 533.
[146] Smurr v. State, 88 Ind. 504.
[147] McA[illegible] Ap[illegible]
[148] Alvord v. Moffatt, 10 Ind. 366.
[149] Leaphardt v. Sloan, 5 Blackf. 278.
[150] Zellers v. State, 7 Ind. 659.
[151] Pennsylvania v. Huffmann, Add. 141.
[152] Gordon v. Austin, 4 T. R. 611.
[153] Com. v. Gillespie, 7 S. & R. 469.
[154] Bingham v. Dickie, 5 Taunt. 814.
[155] R. v. Shakespeare, 10 East, 83; but why so?
[156] R. v. Tannett, R. & R. 351.
[157] Donnell v. U. S., 1 Morris, 141.
[158] Com. v. Bowers, 3 Brewst. 350.
[159] State v. Curron, 18 Me. 320.
[160] Parchman v. State, 2 Tex. App. 228; s. c., 28 Am. Rep. 435.
[161] Morgan v. State, 61 Ind. 447; s. c., 3 Amer. Cr. L. Cas. 246.
[162] Moynahan v. People, 3 Colo. 367. Certainly erroneous.
[163] Roberts v. State, 2 Tex. App. 4.
[164] Collins v. State, 43 Tex. 577.
[165] Cruikshank v. Comyns, 24 Ill. 602.
[166] Black v. State, 57 Ind. 109.
[167] Vance v. State, 65 Ind. 460.
[168] Ferry v. Mathews, T. T. 586, Vict. Ontario Rep. —.
[169] Jacques v. Nichols, T. T. 3 & 3 Vict. Ontario Rep.
Marshall v. Jeffries, 1 Hemp. 299.
Kennedy v. Morriam 70 [illegible].
[172] Queen v. Carter, 6 Mod. 168
[173] Amann v. State, 76 Ill. 188.
[174] Com. v. Mehan, 11 Gray, 321
[175] Jenne v. Jenne, 7 Mass. 94.
[176] 1 East, 180, note.
[177] Burgamy v. State, 4 Tex. App. 572.
[178] Brown v. People, 66 Ill. 344; s. c., 1 Amer. Cr. Cas. 228.
[179] Thomas v. Desney, 10 N. W. Rep. 315.
[180] Becker v. German Mut. Fire Ins. Co., 68 Ill. 412.
[181] Brotherline v. Hammond, 69 Pa. St. 128.
[182] Robson v. Thomas, 55 Mo. 582.

Elijah and Elisha;[183] Pat Whelan and P. Whelan or D. Whelan;[184] B. K. and Co and B. and K;[185] Eliere Lowtrheiser and Ezra Loutzenheiser;[186] E. Seymour and E. Lymour;[187] Spintz and Sprintz;[188] Hairholts and Hairholser.[189]

Cases of Forgery and Counteifeiting.—Many of the forgoing statements are not applicable to cases of forgery and counterfeiting; although it is impossible to say exactly where the line is to be drawn. Thus in a State where the question of identity between names is quite liberally indulged, it was held that the name of S. B. Skinner which was forged to a note (setting it out)with intent to defraud Solomon B. Skinner was bad because it did not allege that S. B. Skinner was identical with Solomon B. Skinner;[190] and E. J. Schweitzer not the same as Emily J. Schweitzer.[191] Yet where the charge was for forging an instrument purporting to be the receipt of Charles W. Jeffries, and the receipt set out was signed "C. W. Jeffries," it was held there was no variance.[192] At common law it was necessary to set out the tenor of the instrument forged or counterfeited unless it was destroyed or in the hands of the defendant; and setting it out according to its purport would render the indictment liable to demurrer or to be quashed. Hence, when it became necessary to introduce the instrument forged or counterfeited in evidence it must be an exact copy of the one set out else there was a fatal variance;[193] and this liability extended to the name forged[194] requiring the name alleged to be substatially the name offered in evidence, although a slight variance in the spelling which does not vary the sound was not fatal;[195] but a letter omitted or changed that makes another word was fatal.[196]

Questions for Jury.—Where an issue is drawn on the question whether two or more names are applied to the same person it is a question for the jury to decide if he is so known;[197] and the same is true where the question is if two names are *idem sonans*,[198] and in questions of identity.[199]

Crawfordsville, Ind. W. W. THORNTON.

[183] Craig v. Brown, Pet. C. C. 139.

[184] Murray v. State, 6 Week. Jur. 463, the name set out as forged to a note.

[185] Mathews v. State, 33 Tex. 102.

[186] Abbott v. State, 59 Ind. 70.

[187] Porter v. State, 17 Ind. 415.

[188] U. S. v. Spintz, 18 Fed. Rep. 377.

[189] Mitchell v. State, 63 Ind. 574.

[190] Shinn v. State, 57 Ind. 144; Rex v. Barton, 1 Moody, 141.

[191] Yount v. State, 64 Ind. 443; Zellers v. State, 7 Ind. 659.

[192] State v. Bibb, 68 Mo. 286.

[193] Rooker v. State, 65 Ind. 86.

[194] Brown v. People, 66 Ill. 344; S. C., 1 Am. Cr. Cas. 228.

[195] Are Messer and Messrs., 2 Russ. Crims. (9th ed.), 800.

[196] Queen v. Drake, 1 Salk. 600, a lottery ticket.

[197] Evans v. State, 62 Ala. 6; Com. v. Desmartean, 16 Gray, 1; Taylor v. Com. 20 Gratt. 825.

[198] Underwood v. State, 72 Ala. 220; Siebert v. State, 95 Ind. 471; Smurr v. State, 88 Ind. 504.

[199] People v. McGilver, 6 W. C. Rep. 490; Hunter v. State, 8 Tex. App. 75; Brown v. State, 32 Tex. 124; State v. Bell, 65 N. C. 313. It would be useless to add anything upon the English practice requiring the Degree, Estate, Title or Mystery of the parties to be stated in the pleading. Such a practice is obsolete in this country, unless, possibly, in Pennsylvania. See Com. v. France, 2 Brews. 568.

INSURANCE OF MORTGAGE INTERESTS.

MANSON v. PHŒNIX INS. CO.*

Supreme Court of Wisconsin, September 22, 1885.

MORTGAGE. [*Insurance—Garnishment.*] *Mortgagee of Chattel Entitled to Insurance Money as against Creditor.*—A mortgagee of chattels which are insured by a policy providing that the loss shall be payable to him as his interest may appear, is entitled to the insurance money to the amount of the mortgage debt, as against creditors of the mortgagor garnishing the insurance company after a loss, although the mortgage was not properly filed.

Appeal from Circuit Court, Shawano county.

Gary, Phillips & Forward, for appellants. R. P. Manson and others. *F. M. Guernsey* and *Finch & Barber*, for respondent, Phoenix Ins. Co.

COLE, C. J. delivered the opinion of the court.

The court below held that at the time of the service of the garnishee summons the garnishee defendant was not indebted to defendant Waller, and did not have any property or money in its possession belonging to him, therefore dismissed the proceeding, The correctness of this ruling is questioned by plaintiff's counsel. The facts upon which the questions of law arise are few and undisputed. It seems that the insurance company issued its policy to Waller, insuring a frame building owned and occupied by him as a saloon, and certain personal property therein. The frame

*S. C., 24 N. W. Repr. 407.

building rested upon blocks and was upon land leased by Waller, who had the privilege of removing it at the expiration of his lease. The building seems to have been treated as a chattel, as it doubtless was. By an indorsement on the policy made when it was issued, the loss was made payable to one Stacy, mortgagee, as his interest might appear. Stacy held chattel mortgages on the building, and certain personal property therein. The chattel mortgages were given to secure notes of even date, which were executed for money loaned. This indebtedness, beyond all question, was *bona fide*. The mortgages were not filed with the clerk of the city where the mortgagor resided, but with the town clerk of the town of Richmond. This is the only objection to the mortgages. The property was destroyed by fire, and the loss was adjusted before the garnishee proceedings were commenced. At the time of the loss Waller was indebted to Stacy on the notes and mortgages in an amount exceeding the amount of the policy; and Waller gave to Stacey an order on the insurance company for all the moneys payable on the policy, and this order the adjuster of the company agreed to pay. This likewise was before the garnishee proceedings were instituted.

Now the counsel for the garnishee insists and claims that when the loss occurred Stacy became entitled to the insurance money, under the clause in the policy making it payable to him; it appearing that the mortgage debt exceeded the amount of the policy. He says, under the decisions in Appleton Iron Co. v. British Amer. Assur. Co., 46 Wis. 24 S. C. 1 N. W. Rep. 9, and Hammel v. Queen Ins. Co. 50 Wis. 240, S. C. 6 N. W. Rep. 805, the legal title of the policy vested upon its execution in the mortgagee as effectually as if it had been subsequently assigned to him. His mortgage debt being greater than the amount of insurance, his interest was the whole interest of the policy. This is certainly the language of these cases. That the mortgagee had an insurable interest in the property does not admit of doubt. "The mortgagor has an insurable interest in the property to the full value of the goods insured; and the mortgagee has an insurable interest measured by the amount for which he holds the mortgage as security. Each, acting independently, may insure his own interest; but the more usual course is for the mortgagor to obtain a policy of insurance payable to the mortgagee in case of loss." Jones, Ch. Mortg. § 100; Wood. Ins. § 257. The legal title to the personal property passed to the mortgagee, by virtue of the mortgage, even before the debt was due. This statement of the law has so often been announced by this court that it requires no reference to the cases which support it. The legal title of the property insured and of the policy being in Stacy, he has an unimpeachable right to the insurance money. In no sense can this money be said, under the circumstances, to belong to the principal debtor, Waller, so as to be liable to garnishment by his creditors; for by its policy the garnishee agreed to pay this money, in case of loss, to Stacy, as his interest might appear, and this was a perfectly valid contract. Consequently, upon the facts, it is clear that the garnishee, when served with process, had nothing in its possession which could be reached by Waller's credditors.

But the counsel for the plaintiffs contends that inasmuch as the chattel mortgages were not duly filed, the right of Stacy to the insurance money was lost, and the creditors of Waller could reach it by garnishment. We do not think this position sound. Though the mortgages were not filed in the proper office, still they were perfectly good as between the parties. The only effect of the failure to duly file the mortgages was to render them invalid as against purchasers or mortgages in good faith, or creditors who had obtained liens upon the insured property by attachment or levy upon execution. It is said Stacy's right to the insurance money depends upon the stipulation in the policy and his mortgages. This is true. But, the mortgages being good as between the parties, Stacy had an insurable interest in the property, measured by the amount of his *bona fide* indebtedness. He has the right to the insurance money even as against the plaintiff. We find that this precise point is decided in Coykendall v. Ladd, 32 Minn. 529; S. C. 21 N. W. Rep. 733. The headnote clearly states the case as follows: "A creditor proceeded to garnish insurance money claimed to be due his debtor upon the loss by fire of a stock of goods covered by a policy of insurance, in which the loss, if any, was made payable to a third party, who appeared as claimant in the proceedings, as his interest should appear. He claimed an interest in the goods by virtue of a chattel mortgage thereon executed by the debtor. Held, that as against the creditor, plaintiff in the garnishment proceedings, such mortgage, if valid on its face and given in good faith, was sufficient to uphold the right of the claimant to the insurance money, to the amount actually due thereon, though the mortgage was never filed for record." In the opinion the learned judge comments on the previous case of North Star Boot & Shoe Co. v. Ladd, p. 381, in the same volume, S. C. 20 N. W. Rep. 334, which was cited and relied on by plaintiff's counsel. It will be seen how the cases are distinguished or reconciled by the court. The decision in the Coykendall Case seems to us sound in principle, and we adopt it as a correct statement of the law upon the question we have been considering.

Our decision is placed upon different ground from that on which the court below decided it. The learned circuit court held that the order upon the insurance company given to Stacy by Waller after the property was destroyed amounted to an equitable assignment of the fund due upon the policy. Whether Stacy could hold the moneys, if his right to them rested on this order alone, is a question we need not decide. It is quite plain

that his right to these moneys, under the policy and the mortgages, was not weakened by this order. But as his claim was good and valid without it, we need not consider what his right would have been if they depended upon the order alone.

The judgment of the circuit court is affirmed.

NOTE—The rule of the principal case, that a mortgagee of a chattel is entitled to the insurance money to the amount of his debt, as against garnisheeing creditors of the mortgagor, where the policy provides that the loss shall be payable to him as his interest may appear, although the mortgage is not recorded, is in accord with the authorities.

The mortgage of a chattel passes the legal title to the mortgagee, subject to be revesten in the mortgagor, upon the performance by him of an express condition subsequent; Jones v. Smith, 2 Ves. Jr. 378: Lickbarrow v. Mason, 6 East. 22, 25, note; Union Trust Co. v. Rigdon, 93 Ills. 458; Eastman v. Avery, 23 Me. 248; Sims v. Canfield, 2 Ala. 535; Petitt v. Bank, 4 Bush (Ky.) 334; Jones on Chat. Mtgs. 84; Jones on Pledges, § 7.

The mortgagee has a legal title to the chattel even before the debt is due; Jones on Chat. Mtgs. (2nd ed.) § 100, p. 91; 8 Ins. Law Journal, 177; Bragg v. N. E. Mut. Fire Ins. Co. 24 N. H. 289.

The mortgagee has an insurable interest in the property mortgaged to the amount of his debt; 8 Ins. Law Journal, 177; Wood on Ins. § 257; Jones on Chat. Mtgs. (2nd ed.) § 100, p. 91; Leland v. Collver, 34 Mich. 418. And he may insure as a general owner without disclosing his particular interest, unless inquired about: Ins. Co. v. Boomer, 52 Ill. 442; 14 Ins. Law Journal, 406. The mortgagor's insurable interest is the full value of the goods: Jones on Chat. Mtgs. § 100. Their respective rights to insure the chattel are separate and distinct. The mortgagee's interest is wholly independent of the mortgagor's: Adams v. Ins. Co. 29 Me. 292; White v. Brown, 2 Cush. 412; May on Ins. (2nd ed), § 116, p. 127 and cases in note 1; Id. p. 128.

Generally the policy is obtained by the mortgagor, with loss, if any, payable to the mortgagee: Jones on Chat. Mtgs. § 100. But where the policy is issued to the mortgagor for his own benefit, the mortgagee has no interest in it: Ryan v. Adamson, 52 Iowa, 30; Columbia Ins. Co. v. Lawrence, 10 Pat. 507; McDonald v. Black, 20 Ohio, 185; Carter v. Rocket & N. Y. Fire Ins. Co., 8 Paige Ch. 436.

When the usual course is followed and the policy provides that the loss, if any, shall be payable to the mortgagee as his interest may appear (as in the principal case), upon its execution, the title to the policy vests in the mortgagee, as fully as if it had been subsequently assigned to him: Grosvener v. Ins. Co. 5 Duer, 517; S. C. 17 N. Y. 391; Ennis v. Fire Ins. Co. 3 Bosworth, 516; Appleton Iron Co. v. Ins. Co. 46 Wis. 24, S. C. 1 N. W. Rep. 9; 8 Ins. Law Journal, 177; Hammel v. Queen Ins. Co. 50 Wis. 240; S. C. 6 N. W. Rep. 805. While this is not precisely the view in Massachusetts, yet it does not differ essentially from the doctrine held in that State. See Barrett v. Fire Ins. Co. 3 Cush. 175; Lowell v. Fire Ins. Co. 8 Cush. 127; Fogg v. Fire Ins. Co. 10 Cush. 337; Hale v. Fire Ins. Co. 6 Gray, 169; Loring v. Ins. Co. 8 Gray, 28. And in such case when the mortgagee's debt is in fact greater than the sum for which the property is insured, the legal title of the policy being in him, and his interest thus appearing to be the whole of the insurance money, this will give him a right to sue to recover it: Hammel v. Ins. Co. 50 Wis. 240; S. C. 6 N. W. Rep. 805.

In such case the mortgagee is entitled to all the insurance money: Cases *supra*. May on Ins. (2nd ed.) § 449, p. 678. And, if, when the loss is payable to the mortgagee, he sues and recovers more than his debt he will hold the surplus, as trustee, for the mortgagor. May on Ins. § 449; Cane v. Ins. Co. 60 N. Y. 619 805. So, if the legal title of the policy is in a creditor this will entitle him to sue in his own name; Northwestern Ins. Co. v. Germania Fire Ins. Co. 40 Wis. 446; Cane v. Ins. Co. 60 N. Y. 619; Chamberlain v. Ins. Co. 55 N. H. 249.

The plaintiff in the principal case insisted that as the mortgage was not filed for record the mortgagee was not entitled to the insurance money. But he was not in a position to make this claim. The mortgage, though not recorded, was good as between the parties, and as to creditors who had acquired no lien in the chattel. If the property had been attached, then he might have been in a position to object that the mortgage was invalid because not recorded. The court, in Coykendall v. Ladd, cited in the opinion of the principal case, where this precise point was involved, said that if the mortgage "was made in good faith to secure an actual indebtedness to him (the mortgagee), then there was a valid interest to secure by the policy, and no one not a subsequent moatgagee, purchaser or creditor who has levied upon the mortgaged property, would be in a position to complain that there was no delivery of possession, or that the mortgage was not duly filed."

RIGHTS AND REMEDIES OF REMAINDERMAN.

WALKER v. WALKER.

Supreme Court of New Hampshire, July 31, 1885.

The necessity of a plenary remedy for the infringement of a legal right, accepted as a general rule of the common law, authorizes and requires the invention and use of convenient procedure for ascertaining and establishing the right and obtaining the remedy.

A real action lies at common law for a remainder of land in fee expectant on the termination of a life estate, and such an action is a plain, adequate and complete remedy for the remainderman whose title is disputed.

Chapter 43, Laws of 1883, does not authorize a bill in equity to establish the title to real estate in a case in which there is a plain, adequate and complete remedy at law.

In equity. Demurrer to a bill in which the following facts are alleged: March 25, 1876, the plaintiff, Nathan, by deed conveyed a farm in Durham to himself for life, and to the defendant, John, after the death of Nathan; and the same instrument conveyed to John all the personal property of which the grantor should die possessed. The deed provided that it should be void if John should neglect suitably to support Nathan on the farm, and this condition John has not performed. Prayer that the deed be declared void, and for general relief.

S. M. Wheeler, for defendant; *Dodge & Caverly*, for plaintiff.

DOE, C. J., delivered the opinion of the court: The necessity of a plenary remedy for the infringement of a legal right, accepted as a general rule of the common law—Edes v. Boardman, 58 N. H. 580, 590—authorizes the use of convenient procedure for ascertaining and establishing the right and obtaining the remedy. Metcalf v. Gilmore, 59 N. H. 417, 433, 435; Webster v. Hall, 60 Id. 7; Clough v. Fellows, *ante*, 133, 134. As a real action is necessary for the recovery of land held by an individual title, so a life estate and the remainder in fee may require one real action for the former and another for the latter. Although in legal quality, the remainder is technically called less, in value it may be more, than the life estate. The division of the entire title into two parts does not destroy the private right of resorting to the law for an unavoidable and indisputable settlement of the disputed title of either part, nor suspend the public duty of allowing the controversy to be conveniently brought into court for a prompt adjudication, which being spread upon the public record, will conclusively show, without extrinsic and controvertible evidence, whether the plaintiff or the defendant is the owner of the property described and claimed in the declaration.

When the fee-simple of a tract of land is claimed by A. and also by B., a real action, in which an explicit determination of their conflicting claims will be made and recorded, is the right of each party, because, as a matter of common law, each is entitled to a convenient and adequate form of procedure; and, as a matter of fact, a real action is such a form. This right is not affected by a possibility or a certainty that a like result would be reached in trespass or some other personal action. If A., instead of bringing a pertinant suit, conveys to C. a life estate of apparently brief duration, and to D. the remainder worth a hundred times as much as the short-lived freehold, and each grantee brings a real action against B., there is no more common-law authority to deprive the more valuable and enduring estate of its full and appropriate remedy than to turn the claimant of the freehold out of court without trial, and compel him to resort to a personal action that may be indecisive and inadequate. For the freehold a personal action may be less inadequate than for the remainder. B., by taking possession of the land, or going upon it, may give C. an opportunity to assail his right of possession in an action of trespass; but if B., having purchased the life estate, is in rightful possession, claiming both estates, but exercising only the right of a life tenant, or if, claiming the remainder only, he sustains his claim by no act, he is armed with a formidable objection against D.'s maintaining any personal action that has yet been invented. The vested estate of the remainderman, conveyable by his deed, and applicable on execution in payment of his debts, but incapable of being adjudged to be anybody's property in any suit brought to ascertain who the owner is, would exhibit a serious defect, imposed by a misconception of the necessity and convenience which are the common law of procedure.

In an action of some form, the plaintiff is entitled to a judgment settling the disputed ownership of this remainder. If his heirs, devisees or grantees may obtain such a judgment in a writ of entry after his decease, he is not obliged to leave them a contest which he for various cogent reasons may wish to begin and end. By his death, or by any delay, importance evidence may be lost. He may be unable to carry on the farm. An estate in it for his life may be of trifling value and insufficient for his support, and he may be prevented by the defendant's apparent title from making a disposition of the remainder necessary for his sustenance. With an abundant estate he may be thrown upon the public charity by the defendant's recorded deed and false claim. The plaintiff's grantee of the remainder claimed by the defendant would be the grantee of such a risk of litigation as prudent men do not knowingly purchase. A false claim, raising a cloud over the title of the plaintiff's farm that may reduce him to the relief of the pauper law, is a violation of his legal right and a wrong that is remediless. The question is not whether his case is one of such hardship as to require a real action, but whether in any case of extreme necessity a real action lies for a remainder of land in fee expectant upon a life estate. Necessity and convenience created forms of action which may be employed in cases in which they are appropriate remedies.

The defendant may contend that he performed the condition of the deed as long as he was permitted by the plaintiff, who expelled him from the farm which the defendant has neither occupied nor entered since his expulsion. He may do nothing for which trespass would lie. His fault may be an omission to support the plaintiff, and a denial of that omission. The sole question may be, whether a certain kind of support which the plaintiff refused to receive from him was suitable; and the circumstances may be such that no form of personal action heretofore introduced would insure such a decision of that question as would be an adjudication of the contested forfeiture of real estate. In an action of trespass, the defendant could not plead soil and freehold; he does not claim a freehold; and his plea might not answer the plaintiff's purpose; it might not inevitably result in a judgment expressly and specifically establishing the title of the remainder. Metcalf v. Gilmore, *ante*, 174, 187, 189; Palmer v. Russell, 43 N. H. 625; Arnold v. Arnold, 17 Pick. 4; Dutton v. Woodman, 9 Cush. 255, 261; Gilbert v. Thompson, Id. 348; Johnson v. Morse, 11 Allen, 540; Morse v. Marshall, 97 Mass. 519, 523; White v. Chase, 128 Id. 158, 159; Foye v. Patch, 132 Id. 105, 111; Stapleton v. Dee, Id. 279, 281. The defendant may think it for his interest to avoid such a judgment in the plaintiff's life-time, and may be comparatively indifferent to a judgment, or

several judgments, for the damage the plaintiff can recover. The plaintiff has no assurance that in trespass the title would be either tried, or determined without trial, or that if it were tried and determined in his favor, parol evidence would not be necessary to show what was tried and what was adjudicated; and a judgment, needing parol evidence to prove the matter in issue and the point decided, falls far short of his certain and adequate remedy. His title, established by such a judgment, might not be a desirable investment. It might be clouded, doubtful and unsalable, as it is now and will continue to be while it depends upon the view a jury or other tribunal may take of such evidence as can be found on the question whether the defendant has suitably supported the plaintiff. Some might fear, that, on the question whether the forfeiture was put in issue and decided in an action of trespass, the opinion of the tribunal would be influenced by their view of the merits of the question of forfeiture. Many might decline to negotiate for a judgment-title requiring parol evidence to sustain it against the defendant's recorded and apparently unclouded proprietorship of the remainder. A satisfactory remedy for the owner of the fee, the life estate or the remainder is something more speedy, less harassing, and less expensive than a suit at law, and a subsequent suit in chancery for the removal of a cloud; and the burden of proving by extrinsic evidence that his title was settled in a personal action, Morgan v. Burr, 58 N. H. 470, however heavy or light the burden might be in chancery or in negotiations with purchasers, would be an unnecessary inconvenience.

"The manner of allegation in our courts may be said to have been first methodically formed and cultivated as a science in the reign of Edward I. From this time, the judges began systematically to prescribe and enforce certain rules of statement, of which some had been established at periods considerably more remote, and others apparently were then, from time to time, first introduced. None of them seem to have been originally of legislative enactment, or to have had any authority except usage or judicial regulation." Stephen Pl. 123. "Till the end of Edward IV, the possession was not recovered in an *ejectionæ firmæ*, but only damages." Hale Hist. Com. Law, c. 8, p. 201. The action of ejectment is said "to have been invented in the reign of Edw. II, or in the early part of that of Edw. III." "In favor of this mode of remedy, the courts determined that the plaintiff was entitled not only to recover the damages claimed by the action, but should also, by collateral and additional relief, recover possession of the land itself * * * In consequence of the establishment of this doctrine, which gave an ejectment an effect similar to that of a real or mixed action, claimants of land were led to have recourse to it in lieu of those inconvenient remedies. Regularly, indeed, none could resort to this form of suit but those who had sustained ouster from a term of years, such being the shape of the complaint but it was rendered much more extensive in its application, by the invention of a fictitious system of proceeding. * * * This fictitious method, being favored and protected by the courts, passed into regular practice; and the consequence is, that ejectment has long been the usual remedy for the specific recovery of real property.' Stephen Pl. 12, 13. "In ejectment, the whole method of proceeding is anomalous, and depends on fictions invented and upheld by the courts for the convenience of justice, in order to escape from the inconveniences which were found to attend the ancient forms of real and mixed actions." Stephen Pl. 32. By less exercise of the inventive faculty, a judgment for land, enforceable by a writ of possession, could be rendered in trespass, or other personal action in which the title is settled; and the construction of a form of real action is no more difficult than the invention or the reconstruction of the personal action of ejectment.

The assize of novel disseizin is said to have been invented by Glanvil, Ch. J., under Henry II, as a more convenient remedy for the recovery of lands when the owner had been recently disseized. The disseizin by election, used in this assize, was a mere fictitious suggestion, inserted in the process to give the assize jurisdiction of a trespass, by one of those astute contrivances which have not been uncommon in the history of English law. As a remedy for the recovery of a freehold, this assize at length went nearly if not altogether out of use, and was succeeded in practice by the writ of entry, which was in its turn supplanted by the action of ejectment, in which no freehold was recovered. Tappan v. Tappan, 36 N. H. 98, 113, 114, 115, 116; 3 Bl. Com. 184. The religious houses "had the honor of inventing those fictitious adjudications of right which are since become the great assurance of the kingdom, under the name of common recoveries." 2 Bl. Com. 271. The invention of the action of replevin is ascribed to Glanvil. Stephen Pl. (5th Am. ed.) App. ex.

The objection to the invention of a form of action is based on the idea that the remedial forms of the common law come from some other source than human design; or that courts, continuously charged by that law with the duty of allowing convenient forms of remedy to be used, are empowered by the same law to permit the use of forms capable of prohibiting the performance of the duty by themselves and their successors; or that the introduction of the whole existing remedial system of the common law, by progressive development through many ages, recent and remote, has been an unlawful usurpation of legislative power by judges who should have defeated justice by permitting no common-law procedure whatever, but whose illegal precedents are law. Until it is shown whose and what authorized edict, of ancient or modern date, annulled the common-law principle that requires the invention and use of common-law procedure, and com-

mands common-law courts to allow convenient remedies, the duty imposed by that principle cannot lawfully be left unperformed. The test of the legality of a form of action or other pleading is not the time of its invention, but its utility as a method of vindicating rights entitled to the best forms and methods that can be produced.

The plaintiff has a plain, adequate, and complete remedy in a real action, and in which there must be a decisive record of a manifestly conclusive decision of the question of forfeiture; and at the trial term he may have leave to amend his bill by filing a declaration at law. In abundant caution, one count can be drawn in the form of an ordinary writ of entry. A judgment upon such a count would leave the life estate open to no contention. A plea of non-tenure of the freehold might raise a question the decision of which is not now called for. Another count, not alleging a disseizin of the freehold, may be in a plea of land, wherein the plaintiff demands of the defendant a tract of land lying in, etc., bounded, etc.; whereupon the plaintiff complains, and says that within twenty years last past he was seized of the demanded premises in his demesne as of fee, and being so seized, he executed and delivered to the defendant a deed, etc. (stating the substance of the deed); and the defendant accepted the same, and undertook to perform the condition thereof, but has failed to perform said condition, whereby he has forfeited the estate in remainder conveyed to him by said deed, and said estate has reverted in the plaintiff. But the defendant still claims said estate. Wherefore the plaintiff prays judgment establishing said forfeiture and his title in fee-simple absolute against the defendant, and a writ of possession, and other proofs for executing said judgment, defending his rights, and giving him the relief to which he is by law entitled.

Another count may be in a plea of land, wherein the plaintiff demands against the defendant a certain estate of a remainder in a (described) form; and whereupon the plaintiff, Nathan, says: March 26, 1876, Nathan, owning said farm, and retaining therein an estate for his own life, conveyed the remainder to John, by deed duly recorded, on condition that John suitably support Nathan during his life. John has not performed the condition of the deed, and by breach of the condition has forfeited said estate in remainder, but still claims said estate; and his claim and record of title are a cloud upon Nathan's title, and prevent his making either an absolute or a conditional sale of the farm, or of a remainder therein, or making thereof any convenient disposition upon which he can depend for the necessaries of life, and for the support and care required by the infirmities of his old age; whereby he is exposed to destitution, and disabled to secure the comfortable maintenance which his farm would enable him to obtain but for the defendant's false and wrongful claim, and the defendant's title, forfeited in fact for breach of the condition subsequent, but apparently valid on the record of deeds. Wherefore the plaintiff prays that his deed to the defendant be adjudged void; that the forfeiture of the remainder thereby conveyed be established by a judgment; and that the judgment be enforced by a writ of possession. Another count, in some form of a personal action, can seek a judgment of forfeiture of the remainder of the personal property. However defective such a declaration may be, it can easily be made sufficient.

A judgment determining the title of the remainder will be conclusive without service of any process for its enforcements. Creighton v. Proctor, 12 Cush. 433, 437; Farwell v. Rogers, 99 Mass. 33, 35. It was held, sixty-nine years ago, that a judgment for such a remainder can be executed by a writ of possession during the life estate of a third person. Penniman v. Hollis, 13 Mass. 429, 432. If the plaintiff had both estates merged in a fee there will be no difficulty, practical or theoretical, in the service of a writ of possession. The defendant was to live on the farm while he performed the condition of his deed—Wales v. Mellen, 1 Gray, 512; and if the condition is broken the plaintiff may need a process of ouster. The judgment, and any necessary process for carrying it into effect, being directed to the ends of justice, cannot be obstructed by imaginary barriers of form. Davis v. Bradford, 58 N. H. 476, 480.

"Any person in possession of real property, claiming an estate of freehold therein, or an unexpired term of not less than ten years, may maintain a bill in equity against any person who makes a claim adverse to his estate * * * and * * the court shall determine the whole question of title." Laws of 1883, chap. 43. This act was intended for the relief of persons whose possession of land should be held to be an obstacle in the way of their maintaining actions at law for the establishment of their disputed titles—20 Am. Law Reg. 561—and not to give a bill in equity to those who have a plain, adequate and complete remedy at law. It is an application of the general unwritten rule, affirmed in Gen. Laws, chap. 209, § 1, that inadequacy of redress at law is a ground of chancery jurisdiction. The construction of the act of 1883 is controlled by the presumption that the legislature did not intend to authorize a chancery suit for the enforcement of a forfeiture and the divesting of an estate in law for a breach of condition subsequent in a case in which the remedy at law was ample.

Case discharged.

Blodgett, J., did not sit; Carpenter, J., dissented on the question of introducing a new form of action; the others concurred.

NOTE.—*Rights and Remedies of Remaindermen.*—At a very early period in the history of American jurisprudence it was held that upon the termination of the life interest the remainderman might recover his estate by action of formedon in remainder, or, if he had entered after the death of the donee for life, by a writ of entry, declaring on his own seisin: Wells v.

Prince, 4 Mass. 54. The principal case, it will be noticed, suggests a declaration embracing a count in the form of a writ of entry and other counts in various forms of pleas of land. Where personal poperty, however, instead of land, is the subject of the estate, the question is freed from much of its inherent difficulty, and several forms of action have been successfully employed in such cases. Thus where the remainder was limited to take effect on the marriage of the first devisee, it was held when that event occurred, that the action of account would lie to recover the property limited over: Griggs v. Dodge, 2 Day (Conn.) 28. So an action on the case has been sustained under similar circumstances: Taber v. Packwood, *Idem* 52. If the tenant for life incurs a forfeiture, the remainderman is not bound to treat the estate as merged, and to enter immediately; he may have his action after the death of the tenant for life, without being affected by the previous possession: Moore v. Luce, 29 Pa. St. 260.

The remainderman also has his remedies, in proper cases, against the tenant of the particular estate. Thus in the case of Wade v. Malloy, 16 Hun. (N. Y.) 226, where the life tenant had wilfully neglected to keep down the interest on a mortgage on the land, with the intention of allowing a foreclosure and sale, which sale in fact transpired, it was held that the remainderman might maintain a civil action against him for the damage he had sustained by reason of such neglect, the court saying, "the fact that there may be no precise precedent for such an action as this should be no obstacle in her way, for, it is one of the chief beauties of our system of jurisprudence that it is flexible, and opens to take in all meritorious cases and give a remedy." But the tenant for life is only required to pay taxes and incumbrances in case the income of the estate is sufficient therefor, and in an action by the remainderman against such tenant for failure to so preserve the estate, the burden of proof is on the plaintiff to show that the income was sufficient: Clark v. Middlesworth, 82 Ind. 240. Again, the owner of a remainder may maintain an action to restrain the life tenant, by injunction, from the commission of waste: Williams v. Peabody, 8 Hun. (N. Y.) 371; Lewis v. Kemp, 3 Tred. Eq. 233. Nor is it necessary to the maintenance of such action that his interest should be vested; it is sufficient though it be contingent: Griswold v. Greer, 18 Ga. 545. And when such an action will lie in favor of the remainderman, he may also, under proper circumstances, require the tenant for life to give security for the preservation of the property. Hales v. Griffin, 2 Dev. & Bat. Eq. 425; Smith v. Daniel, 2 McCord Ch. 143; Langworthy v. Chadwick, 13 Conn. 42. But the giving of security is not a matter of course, but only to be required, under special circumstances, in the sound discretion of the court. Houser v. Ruffner, 18 W. Va. 244; and see Nance v. Coxe, 16 Ala. 125. An early Connecticut case holds that an action of waste will not lie in favor of the remainderman against a stranger. Wilford v. Rose, 2 Root, 20. But in Robertson v. Rodes, 13 B. Mon. 325, it is stated that in some instances the owner of a remainder may maintain a suit against a stranger for injuries done to the estate, and that since he cannot bring trespass *vi et armis*, not having the right of immediate possession, his proper form of action is case, upon an allegation that the value of his remainder has been impaired by the acts complained of. And where a stranger takes possession of the personal property which is the subject of the estate, during the life of the particular estate, and sells the absolute interest therein, this an injury for which an action lies in favor of the remainderman. Arthur v. Gayle, 38 Ala. 259. So equity has jurisdiction of a bill *quia timet* by a remainderman against the life tenant and one claiming adversely to the title of the complainant, when the two are conspiring to place the chattel concerned beyond his reach, for a settlement of the conflicting claims and for the security of his title. Yancy v. Holladay, 7 Dana, 230.

Where an action in the nature of a creditors's bill for the settlement of the estate of an insolvent testator results in a decree for the sale of the real estate for the benefit of creditors, and it appears that there are remainderman under the will who were not parties to the cause, they will be allowed, pending an appeal, to come in and protect their interests. Whaley v. Charleston, 8 Rich. (S. C.) 344. Where land which is subject to a lease is devised to several devisees, to be divided at the expiration of the term, the rents accruing after the testator's death belong to, and may be recovered by, the devisees. Combs v. Branch, 4 Dana, 547.

The statute of limitations does not run against a remainderman until, by the termination of the particular estate, his right of possession has accrued. Aiken v. Suttle, 4 Lea (Tenn.) 103; Gernet v. Lynn, 31 Pa. St. 94.

H. Campbell Black.

WEEKLY DIGEST OF RECENT CASES.

1. Bond. [*Consideration.*] *Bond Executed for Forthcoming of Property Seized under Void Search Warrant, without Consideration.*—A constable, acting under a void search warrant, seized certain property, which he allowed to be retained by defendants upon their executing a forthcoming bond for the delivery of the same. The property not being delivered up, action was brought to enforce its condition, but it was *held*, that the bond was without consideration and void. [In giving the opinion of the court, upon this point, Somerville, J., said: "The case for consideration then, as made by the pleadings, is that of a mere trespasser, without legal authority, undertaking to seize the property of a citizen, and allowing him to retain possession of his own property upon his executing a bond to have it forthcoming at a time and place stated. The argument is that the defendants are estopped from showing by a parol proof a want of consideration, because it contradicts the recital in the bond that the property is that of the affiant, who is the beneficial plaintiff in the suit, and that the defendant was allowed to retain the property on the faith of the execution of the bond. A consideration is essential to every valid executory contract, and may be defined to be "that which the party to a contract gives, or does, or promises in exchange for what is given, or done, or promised by the other party.[1] 1 Whart. Contr. § 493. We can perceive no element of a valuable consideration in this case moving from the plaintiff, who is the obligor of the bond. The property which he was about to seize is admitted by the demurrer

to the plea, to belong to the defendant, and not to the affiant Cockburn. The plaintiff then suffered no detriment by desisting from its seizure, for by such an act he would have been a trespasser. He parted with nothing, and did not suspend or forbear a legal right, as he would have done had the process been valid. Permitting one to retain possession of his own property, with which he has never parted, on his promise to deliver it to a trespasser, who has no lawful right to take or seize it, is the plainest possible illustration of a promise void for want of any legal consideration. * * * The only act of the plaintiff based on this admission, was the forbearance on his part to commit a trespass, and this is not such a consideration as will be recognized by law as conferring a legal right, or closing one's mouth against pleading the truth. *Counts v. Harlan*, Ala. Supreme Court, December Term, 1885; S. C. Alabama.

2. CORPORATIONS. *Security for Loans—Marshalling Assets.*—Parties who have loaned money to a corporation, after converting personal property given as security into money, and using it for their benefit under their chattel mortgage, cannot come into a court of equity and claim a proportionate share of the amount of a bond with others who relied upon it as security for their loans when made to the corporation, and who had no notice that such parties were to share with them, especially when such parties did not originally rely on such bond as security. *Woodin v. Sparta, etc., Co.*; *Loomis v. Same*,, S. C. Mich., Jonuary 13, 1886; 26 N. W. Rep. 504.

3. ———. *Powers of Officers to Issue Bond.*—The officers of a corporation have no power to issue a bond, when its effect is to lessen the security of an original bondholder, to secure indorsers upon a note which was not intended to be secured by bonds when given.—*Ibid.*

4. CONSTITUTIONAL LAW. [*Obligation of Contracts.*] *Virginia Statute allowing Certain Contracts made with Reference to Confederate Money to be Discharged on Proof of Fair Value, &c., Unconstitutional.*—A statute of Virginia, of February, 1867,—after declaring that, in an action or suit or other proceeding for the enforcement of any contract, express or implied, made between the first day of January, 1862, and the tenth of April, 1865, it shall be lawful for either party to show, by parol or other relevant testimony, what was the understanding and agreement of the parties, either expressed or implied, in respect to the kind of currency in which the same was to be performed, or with reference to which, as a standard of value, it was made,—provides "that when the cause of action grows out of a sale or renting or hiring of property, whether real or personal, if the court, or, when it is a jury case, the jury, think that, under all the circumstances the fair value of the property sold, or fair rent or hire of it, would be the most just measure of recovery in the action, either of these principles may be adopted as the measure of the recovery instead of the express terms of the contract." *Held*, that the statute in this provision sanctions the impairment of contracts, which is not, under the federal constitution, within the competency of the legislature of the State. Accordingly, in a suit to enforce a lien for unpaid purchase money of real estate sold during the war, for which a note was given payable in dollars, but shown to have been made with reference to Confederate notes, a decision that the plaintiff was entitled to recover the value of the land at the time of the sale, instead of the value of Confederate notes at that time, was erroneous. *Effinger v. Kenney*, S. C. U. S., Dec. 7, 1885; 6 Sup. Ct. Repr. 179.

5. CRIMINAL LAW—*Indictment of Ticket Agent for Failure to Open Ticket Office—Defense.—Held*: It is a good defense to an indictment of a ticket agent under the new Code, § 2359, for failing to keep open his office for one hour before the departure of a particular passenger train, that the railroad company with notice to the public had by its rules dispensed with the sale and purchase of tickets for that train and required the passengers to pay the regular ticket fare on the train. *Brady v. State*, Supreme Court Tenn., December Term, 1885.

6. ———. ———. *Conspiracy—What Evidence Admissible against Co-Conspirator.*—1. That only statements made by parties after a conspiracy has been formed to commit a crime can be introduced against co-conspirators. 2. One of the defendants went to the county farm where the defendant at bar was held as a prisoner and offered to pay the fine and take him away. The county judge over the objection of the defendant was allowed to state: "I asked what he wanted with the defendant, he said for a purpose." The judge then said, "why, he would kill a man for a dollar." This was error even if there were a conspiracy formed and proved, as it was an opinion of the witness as to the character of the defendant. 3. It is error to allow in evidence that a short time before the killing and before any proof of conspiracy, if there was any, that one of the defendants had procured a policy of insurance to be taken on deceased's life as against this defendant. 4. It was error to allow proof of the conversations of the co-defendant at the telegraph office concerning the receipt and contents of a letter, it being a declaration, after the common purpose had ended, by a co-defendant. *Owens v. State*, Supreme Court Tenn., December Term, 1885.

7. ———. ———. *Evidence—Dying Declarations.*—The deceased stated that she did not believe she would ever recover from the injury, and the facts further showed she was severely injured and believed she would die. This was sufficient to allow her declarations to come in as evidence under the head of dying declarations. It was not incompetent to allow the dying declaration that "the defendant did it; he looked like he did," to be introduced. *Baxter v. State*, Supreme Court of Tenn., December Term, 1885.

8. ———. ———. *Exceptions—Must be Specific.*—Exceptions to evidence must be taken in a specific manner. A general objection to testimony, where a part is legal and a part illegal, will not reach the illegal part, especially some time after the evidence has been before the jury. *Ibid.*

9. ———. ———. *When Witness not under the rule may Testify.*—It is not error for the court to allow a witness to testify in rebuttal where the defendant insisted on the witness being put under the rule, and the court declined to do so, the witness being an officer of the court; this lies in the discretion of the court. 4 Lea, 430. *Ibid.*

10. CUSTOMS DUTIES. [*Rev. St. U. S.*, § *2931.*] *Requisites of Action to Recover Back.*—It is incumbent on an importer to show, in order to recover

money paid to a collector, not only due protest and appeal to the secretary of the treasury within 30 days after the liquidation, but also a decision on such appeal, and a bringing of a suit within the 90 days limited by the statute after the decision, or else that there has been no decision, and the prescribed time after the appeal has elapsed. *Arnson v. Murphy*, Sup. Ct. U. S., Dec. 7, 1885; 6 Sup. Ct. Repr. 185.

11. ———. *Notice to Claimant of Decision of Secretary of Treasury not Necessary.*—There is no provision in the statute which requires that the decision, on appeal to the secretary of the treasury, shall be communicated to the claimant by any action of the officers of the government. *Ibid.*

12. EASEMENTS—*Highways—Streets of a City—Urban Servitudes—May be Extended when—City not Restricted to Former Uses—Poles may be Erected along Streets for Telephone Wires.*—1. A highway is nothing more than an easement on land, and the public has no other right in it than the right of passage, with the powers and privileges incident to such right. This rule is strictly true as to the interest which the public acquires in highways in the country, but it must be taken with some limitation as to the streets of a city. 2. Urban servitudes, such as the construction of sewers and the laying of gas and water pipes, are necessary incidents to the use of streets in a city and are paramount to the rights of the owners in fee. This is equally so whether such streets be laid out on property belonging to the corporation or they become public streets by dedication, grant or upon compensation made to the owner of the fee. 3 A city has the authority to appropriate its streets to all such uses as are conducive to the public convenience and good, provided such uses do not interfere, in any way, with the streets as highways. 4. In extending the urban servitudes of its streets a city is not compelled to restrict itself to such uses as have been permitted, but as civilization advances new uses may be found expedient and these may be authorized. Angell on Corp. § 312; Thompson on Highways, chap. 2, p. 257. The erection of poles on the outer edge of sidewalks, on which to place wires for the transmission of messages by telephone is one of the modern uses to which the streets of a city are properly subjected. 5. The removal of portions of a retaining wall under the outer edge of a sidewalk for the erection of telephone poles is not taking private property for public use without compensation although such retaining wall was built by the owner in fee of the abutting lot. Such wall may be subjected to the same uses as the street. *Julia Bldg. Ass. v. Bell Telephone Co.* Sup. Ct. Mo., March 1, 1886.

13. INSURANCE — *Re-Insurance — Compromise of Disputed Loss by Original Insurer.*—The plaintiff was an original insurer, and the defendant its re-insurer, against a certain risk by fire: upon the destruction of the insured property the two companies determined that no liability to pay the loss attached, and agreed that the action brought to recover the loss should be defended. For that purpose the original insurer was authorized to act as agent of the reinsurer in making its defense. *Held*, that in the exercise of its authority it was bound to defend the action until the question of liability was determined; and that it could not compromise and settle the claim so as to bind the re-insurer, unless the latter had knowledge of the compromise, and consented to or approved of it. *Comm. Ass. Co. v. American Central Ins. Co.*, Sup. Ct. California, January 28, 1886. West Coast Reporter.

14. INDEMNITY—*Indemnitor, when Bound by Judgment.*—Where one is bound to protect another from liability, he is bound by the result of a litigation to which such other was a party; provided he had notice of the litigation, and opportunity to control and manage it, and the same was conducted in a reasonable manner, and without fraud or collusion. *Ibid.*

15. JUDGMENT. [*Fraud—Remedies.*] *Annulment of Judgment Obtained by Fraud—Statutory Remedy by Motion not Exclusive.*—As a general rule, if relief be obtainable against mistakes or errors of law or fact committed in a judicial proceeding, the statutory remedies for relief must be resorted to in the proceeding itself. But where a judgment is fraudulently obtained against a defendant, and an execution and sale thereunder is had, after satisfaction of the cause of action, in violation of a stipulation and promise to dismiss the action, and without knowledge or notice to the defendant until after the sale of his property, the defendant is not limited to the relief by motion, provided for in § 473 of the California code of civil procedure, but may maintain an action in equity to set aside the judgment and execution sale thereunder. [In giving the opinion of the court it is said by McKee, J.: "In Lapham v. Campbell, 61 Cal. 296, we held that where a complaint in an original action for relief against a judgment fraudulently taken shows sufficient reasons why the statutory remedy by motion has not been resorted to, the action is maintainable. And subsequently, in Baker v. Riordan, 65 Id. 368, 3 West Coast Rep. 210, it was held that a judgment taken by fraud, and without notice to the injured party, is absolutely void. A judgment taken in such circumstances is not taken through mistake, inadvertence, surprise, or excusable neglect, within the meaning of § 473 of the code, and the party against whom such a judgment is taken has the right to an original action to have it annulled by the judgment of a court of equity. It is a general rule that if relief be obtainable against mistakes or errors of law or fact committed in a judicial proceeding, the statutory remedies for relief must be resorted to in the proceeding itself. 'But,' as the Supreme Court of the United States says, in United States v. Throckmorton, 98 U. S. 65, 66, 'there is an admitted exception to this general rule in cases where, by reason of something done by the successful party to a suit, there was in fact no adversary trial or decision of the issue in the case. Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side—these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing: See Wells' Res

Adjudicata, § 499; Pearce v. Olney, 20 Conn. 544; Weirich v. De Zoya, 7 Ill. 385; Kent v. Richards, 3 Md. Ch. 392; Smith v. Lowry, 1 Johns. Ch. 320; De Louis v. Meek, 2 Iowa, 55. In all these cases, and many others which have been examined, relief has been granted on the ground that by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court.' *California Beet Sugar Co. v. Porter*, S. C. Cal. Jan. 26, 1886; 9 West Coast Repr. 195; 9 Pac. Repr. 313.

16. MUNICIPAL CORPORATIONS. [*Mandamus*] *When not Compelled to Levy a Tax to Pay a Judgment.*—Where the ordinary expenses, of carrying on the government of a municipal corporation require all the proceeds arising from a tax, which is the full limit the corporation is authorized to levy, it cannot be compelled to apply a part of such fund to the payment of a judgment held by a creditor against it. [In the opinion of the court by Waite, C. J., it is said: It is conceded "that the court cannot order the board of supervisors to levy a tax in excess of the amount provided by statute in a case like the one under consideration." Such was the effect of the decision of this court in U. S. v. Macon Co., 99 U. S. 582, and the courts of Iowa have uniformly held the same way. Coffin v. Davenport, 26 Iowa, 515; Polk v. Winett, 37 Iowa, 34; Iowa R. L. Co. v. County of Sac, 39 Iowa, 134. It is claimed, however, that the court might properly order one mill of the six-mills tax authorized by law to be levied separately from the rest, and set apart specially for the payment of the judgment. It was said in Beaulieu v. Pleasant Hill, 4 McCrary, 554, S. C., 14. Fed. Rep. 222, that this might be done where the full levy was not required to defray the current expenses chargeable upon the ordinary revenue fund, and such is the effect of Coy v. City of Lyons, 17 Iowa, 1. But here the answer shows affirmatively that the whole of the six-mill levy of 1882 will not be sufficient to pay the ordinary current expenses of the county. No effort was made to have the answer more specific and certain so as to show what the whole amount of the tax would be, and in what way it was to be expended, but the relators were content to go to a hearing upon a general demurrer to the answer as it stood. We must therefore assume the fact to be that a special tax cannot be levied to pay the judgment without embarrassing the county in the administration of its current affairs. It was held in East St. Louis v. U. S., 110 U. S. 321, S. C. 4 Sup. Ct. Rep. 21, decided since the judgment in this case below, that "the question what expenditures are proper and necessary for the municipal administration is not judicial: it is confided by law to the municipal authorities. No court has the right to control that discretion, much less to usurp or supersede it. To do so, in a single year, would require a revision of the details of every estimate and expenditure, based upon an inquiry into all branches of the municipal service; to do it for a series of years, and in advance, will be to attempt to foresee every contingency and provide against every contingency that may possibly arise to affect the public necessities." This, we think, disposes of the present controversy. It is true that was a case in which a bondholder was seeking payment out of the ordinary revenue fund after the special tax authorized by law to be levied for his benefit had been exhausted, but the balance due him was just as much a charge on the ordinary revenue fund as if there had been no other provision in his favor. U. S. v. Clark Co., 96 U. S. 211. In Coy v. City of Lyons, *supra*, the municipal authorities had levied ten mills. In this way they showed that the full tax was not needed for current purposes, and the court was therefore free to require them to proceed with the execution of the power which had been conferred by law until the judgment creditor was paid. But in Coffin v. Davenport, 26 Iowa, 515, the same court held that "when the ordinary expenses of carrying on the government of a municipal corporation require all the proceeds arising from a tax, which is the full limit the corporation is authorized to levy, it cannot be compelled to apply a part of such fund to the payment of a judgment held by a creditor against it." The case of Beaulieu v. Pleasant Hill, *supra*, is to the same effect, for there the order was to levy the special tax for the payment of the judgment, unless it should be made to appear upon a further return that the power had been already exhausted, and that the fund raised had been properly appropriated." *Clay County v. United States*, S. C. U. S., Dec. 7, 1885; 6 Sup. Ct. Repr. 199.

17. NEGLIGENCE—*Obstruction of Sidewalk by Occupant of Business House by means of Skids used in Removing Goods.*—In Welsh v. Wilson, recently decided by the New York Court of Appeals the facts were that that the defendant, desiring to remove two large cases of merchandise from his store in the City of New York, placed a pair of skids from a truck, across the sidewalk to the steps of the store. It would not have taken more than five minutes to remove the case from the store to the truck. After the skids had been there about two minutes the plaintiff came along the sidewalk, and seeing the skids in her pathway, turned toward the store, and attempted to pass around the skids, and in doing so she slipped upon the steps and was injured; and then she brought this action to recover damages. The court held that the defendant was not guilty of negligence, Earl, J., saying: "The defendant had the right to place the skids across the sidewalk temporarily, for the the purpose of removing the cases of merchandise. Everyone doing business along a street in a populous city must have such a right, to be exercised in a reasonable manner, to as not to unnecessarily incumber and obstruct the sidewalk. When the plaintiff found this obstruction in her pathway, she had the option either to wait a couple of minutes or to cross the street and pass upon the other sidewalk, or to pass around the truck in the street or to take the way she selected. The defendant was under no obligation to furnish her a safe passageway around the obstruction (People v. Cunningham, 1 Denio, 530; Commonwealth v. Passmore, 1 Serg. & Rawle, 219; People v. Horton, 64 N. Y.. 610). The defendant owed the plaintiff no duty to see that its steps were in an absolutely safe condition for travel, and it does not appear that they were dangerous under such circumstances as to charge him with carelessness, even if that would have been sufficient to impose any liability upon him in this case." *Welsh v. Wilson*, N. Y. Court of Appeals.

18. PRACTICE—*Evidence.*—Plaintiff offered one witness on an important issue, so early in the trial that, if admitted, he could have procured the at

tendance of other witnesses. The court at first ruled against his admission, but on further consideration decided to admit the witness; but not until it was too late to summon the other witnesses. *Held*, a good cause for a new trial. *Bradley, etc., Co. v. Fuller*, Sup. Ct. Vt., Jan. 15, 1886; New England Reporter.

19. TAXATION. [*Northern Pacific Railway Land Grant.*] *When not Subject to Taxation.*—Lands granted to the Northern Pacific Railroad Company in Dakota are not subject to taxation until the cost of surveying and selecting them has been paid into the United States treasury by the company although the road has been built before the levy of the tax. *Northern Pacific R. Co. v. Rockne*, S. C. U. S., Dec. 7, 1885; 6 Sup. Ct. Repr. 201.

20. TRUSTEE. [*Power of Appointment.*] *Refusal of Sole Trustee to Appoint Co-Trustee.*—A testator declared that if the two trustees appointed by him, or either of them, or any person or persons to be appointed under that clause, should die, or be unwilling or incompetent to execute the trusts of the will, it should be lawful for the competent trustees or trustee for the time being, if any, whether retiring from the office or not, or if none for the executors or administrators of the last surviving trustee, to substitute any fit person or persons in whom alone, or, as the case might be, jointly with the surviving or continuing trustee, the trust estate should be vested. *Held*, that a sole continuing trustee was justified in refusing to appoint a second trustee, although required to do so by the *cestui que trust*, and that a trust fund which he had been ordered by the court below to pay into court must be paid out to him alone. *Peacock v. Colling*, Eng. Ct. of App., March 16, 1885; 53 Law Times Reps. (N. S.) 620.

21. WRIT OF ERROR. [*To U. S. Sup. Ct.*] *Jurisdiction as Determined by amount in Dispute.*—A. bought suit against a railroad company for refusal to transport 1,000 kegs of beer to a town in the State of Iowa, claiming $1,200 damages, and subsequently amended his declaration so as to increase his claim for damages to $10,000, and it was stipulated that on error to the Supreme Court only the amended declaration, pleas of defendant thereto, and demurrer and ruling of the court thereon should be copied into the record. *Held*, that upon the face of the record it was apparent that the actual value of the matter in dispute was not sufficient to give the Supreme Court jurisdiction, and that the writ should be dismissed. [In giving the opinion of the court, Waite, C. J., says: "It is now settled that our jurisdiction in an action upon a money demand is governed by the value of the actual matter in dispute in this court, as shown by the whole record, and not by the damages claimed or the prayer for judgment alone. Lee v. Watson, 1 Wall. 337; Schacker v. Hartford Fire Ins. Co., 93 U. S. 241; Gray v. Blanchard, 97 U. S. 564; Tintsman v. National Bank, 100 U. S. 6; Banking Ass'n v. Insurance Ass'n, 102 U. S. 121; Hilton v. Dickinson, 108 U. S. 174; S. C. 2 Sup. Ct. Rep. 424; The Jessie Williamson, Jr., 108 U. S. 309; S. C. 2 Sup. Ct. Rep. 669; Jenness v. Citizens' Nat. Bank of Rome, 110 U. S. 52; S. C. 3 Sup. Ct. Rep. 425; Webster v. Buffalo Ins. Co., 110 U. S. 388; S. C. 4 Sup. Ct. Rep. 79; Bradstreet Co. v. Higgins, 112 U. S. 227; S. C. 5 Sup. Ct. Rep. 117. As was said in Hilton v. Dickinson. 'It is undoubtedly true that until it is in some way shown by the record that the sum demanded is not the matter in dispute, that sum will govern in all questions of jurisdiction, but it is equally true that, when it is shown that the sum demanded is not the real matter in dispute, the sum shown, and not the sum demanded, will prevail.' Here the suit is to recover damages for not transporting from Chicago to Marshalltown 1,000 kegs of beer. There are no allegations of special damage or malicious conduct. In the original declaration the claim was for only $1,200, and it was not until the case was actually decided, or about to be decided, on its merits, that application was made for leave to increase the amount of the demand. Then it was manifestly done, not in the expectation of recovering more than was originally claimed, but to give color to the jurisdiction of this court. As it stands, the case is not materially different in principle from that of Lee v. Watson, *supra*, where, after a demurrer was sustained, the demand for damages was increased, by leave of the court, so as to be in excess of our jurisdictional limit, although it was apparent from the whole record that in no event could there be a recovery except for a much less sum. Under these circumstances the court did not hesitate to dismiss the cause, for the reason that it was clear the amendment was made for the sole purpose of giving color of jurisdiction. Here the stipulation which was put on file, taken in connection with the time it was made, shows unmistakably the purpose of the amendment was to make a case for our jurisdiction. In Smith v. Greenhow, 109 U. S. 669, S. C. 3 Sup. Ct. Rep. 421, the action begun in a State court was trespass for taking and carrying away personal property of the value of $100, but the damages were laid at $6,000. On the removal of the case to the Circuit Court of the United States it was remanded, on the ground that the case was not one arising under the constitution or laws of the United States. This we decided was error, and therefore reversed the order to remand, but in doing so, remarked that, 'if the Circuit Court had found, as a matter of fact, that the amount of the damages stated in the declaration was colorable, and had been laid beyond the amount of reasonable expectation of recovery, for the purpose of creating a case removable under the act of congress. * * * the order remanding it to the State court could have been sustained.' This was said in reference to the requirement of the removal act of 1875, which limits the jurisdiction of the Circuit Courts, under such circumstances. to cases 'where the matter in dispute exceeds * * * the sum of $500, but it is equally applicable to appeals and writs of error to this court where our jurisdiction depends on the money value of the matter in dispute.'] *Bowman v. Chicago, etc. R. Co.*, S. C. U. S., Dec. 7, 1885; 6 Sup. Ct. Repr. 192.

22. —— ——. *Deprivation of Right Secured by Constitution of the United States.*—An action in the Circuit Court by a shipper against a railroad company to recover damages for a refusal of the company to transport 1,000 kegs of beer from Chicago to a town in the State of Iowa, on the ground that it was prohibited by the Statutes of Iowa from bringing such intoxicating liquors into the State, is not an action brought on account of the deprivation of a right, privilege, or immunity secured by the constitution within the meaning of the fourth subdivision of section 669 of the Revised Statutes; and where the amount involved is less than $5,000 the Supreme Court has no jurisdiction on writ of error. *Ibid.*

QUERIES AND ANSWERS.*

[Correspondents are requested to draw up their answers in the form in which we print them, and not in the form of letters to the editor. They are also admonished to make their answers as brief as may be.—Ed.]

QUERIES.

25. A. sells property to B., and takes a mortgage on B.'s land for security, and in the mortgage, B. waives his right to "exemption" under the laws of his State as against the debt. Can some one cite me a case where the distinction is drawn between the word "homestead" and the word "exemption," or where they have been held synonymous terms? SUBSCRIBER.

26. EQUITIES AGAINST A COUNTY UNDER A VOID CONTRACT.—Where material and work are furnished a county under contract, and is accepted, used, and enjoyed, and the contract is held unconstitutional and void, what are the equities against the county on account of the work and material furnished? H.

27. INTEREST UPON TOWN ORDERS.—It has been customary to allow interest at the legal rate upon town orders after they have been signed by the town treasurer and "payment refused for want of funds," but I desire to know is it legal under the Wisconsin statute? Cite authorities. H.

New Richmond, Wis.

28. POLL TAX ON "ABLE BODIED MEN."—Sec. 11, Sessions Laws of Illinois for 1883, page 140, provides that commissioners of highways may assess and collect a poll tax from all able-bodied men in their townships between the ages of 21 and 50 years. What is the meaning of the term "able-bodied" as thus used and does it include a pensioner of the U. S. disabled by gun-shot wound in the leg? Has the term ever been construed? Please cite cases. MARKS.

29. DOES THE CHATTEL MORTGAGE FOLLOW THE PROCEEDS.—A. owns a cow and gives to B. a chattel mortgage on the cow, afterwards the cow was killed on the railroad. A. sues the railroad for damages and recovers. Does chattel mortgage follow proceeds? X.

30. Suppose A. purchases of B., a wholesale dealer, 3 sacks of beans each containing 2 bushels and worth $1.50 per bushel, and the sacks are set apart for delivery but not paid for. In the afternoon of the same day C. purchases of B. 3 sacks of coffee each containing 120 lbs. and worth 25c. per lb. These sacks are also set apart for delivery but not paid for, and are similar in appearance to the sacks containing the beans. None of the sacks are marked in any way. The next day A. calls for the beans pays the prize, viz.: $9; but the delivery clerk by mistake gives him the 3 sacks of coffee. A. afterwards discovered the mistake and took the cofiee to D., a retailer, and sold it, put the money in his pocket and absconded. C. comes for his coffee but finds beans awaiting him instead. B. now brings an action of replevin against D., the *bona fide* purchaser, for the recovery of the coffee. Will the action lie? If so on what grounds?

A LAW STUDENT.

QUERIES ANSWERED.

Query 17. [21 Cent. L. J. 299.] In those States adopting the common law rule, and the measure of damages for breach of warranty of title to land, where a remote warrantor is sued by the party evicted under paramount title, what can be recovered —the purchase money with interest paid to the remote warrantor, or the purchase money with interest paid by the party evicted to his immediate vendor? Please cite authorities. B. & K.

Groesbeck, Texas.

Answer.—The party evicted, according to the decisions of some of the States, is entitled to the value of the land at the time of eviction in a suit against any prior warrantor. Doherty v. Dolan, 65 Me. 87; Keeler v. Wood, 30 Vt. 242; Norton v. Babcock, 2 Met. 516; Sterling v. Peet, 14 Conn. 245 The warrantor is liable only by virtue of his own contract, and in most of the States he is only liable for the contract price of the land in his own deed, together with the costs of the suit in which the present plaintiff was evicted, and interest on said contract price for the time the present plaintiff has been deprived of, or is accountable to, the superior owner for the mesne profits. Hopkins v. Lane, 9 Yerg. 79; 2 Sutherland on Dam. 281; Wood v. Kingston Coal Co., 48 Ill. 356; 2 Kent's Com. 476; Holmes v. Senneckson, 15 N. J. L. 313; Dalton v. Bowker, 8 Nev. 199; McGary v. Hastings, 39 Cal. 360; Tong v. Matthews, 23 Mo. 437; Cin'ti,etc.R.R. Co. v. Pearce, 28 Ind. 502. S. S. M.

Query 20. [21 Cent. L. J. 323.] If A is traveling from the north part of the State of Missouri to the southern part, and carrying a large amount of money for the purpose of buying cattle, and for his protection carries a pistol concealed, will he be liable, if indicted, under § 1274 Rev, Stat. for carrying concealed weapons! Or does § 1275 exempt such an one? Please cite authorities. M. & P.

Hartville, Mo.

Answer.—Section 1275 expressly exempts one traveling from any liability under Section 1274 for carryiug concealed weapons. The journey may be short and need not be out of the State. Lockett v. State, 47 Ala. 42. The protection extends from the setting out till the return. Coker v. State, 63 Ala. 95. See also Maxwell v. State, 38 Tex. 170, and *ex parte* Boland, 11 Tex. Ap. 159.

Query 42. [21 Cent. L. J. 539.] REPLEVY BY WIFE OF HER HOUSEHOLD GOODS FROM HER HUSBAND.—The laws of Indiana as they now exist permit a married woman to own and hold personal property in her own right and to sell the same without the consent of her husband; she may sue and be sued. Under this condition of things, can the wife, during the existence of the marriage bonds, withdraw at her own pleasure and replevy from her husband the household goods she holds as her separate property, but which she permitted to be used as among the necessary paraphernalia for keeping house, unless she, at least, first shows cause for so doing? J. S. B.

Plymouth, Ind.

Answer.—The wife may dispose of her separate property at pleasure, as though she were a *femme sole.* Schouler's Hus. & Wife, § 246, citing numerous cases. As to her separate property she has the same protection against her husband's interference, that a single woman has against a stranger. *Idem.* § 248. So she can remove her property at pleasure, and if necessary can replevy it. S. S. M.

Query 37. [21 Cent. L. J. 443.] LIABILITY OF WIFE FOR PHYSICIAN'S BILL DURING LAST ILLNESS OF HUSBAND.—A. and B. were husband and wife, living together as such; A., the husband, was taken sick, and employed C., a physician, who attended him during his last illness. Question. Is the wife liable for

said physician's bill under the following statute? "The expenses of the family and of the education of the children shall be chargeable upon the property of both husband and wife, or either of them, in favor of creditors therefor, and in relation thereto they may be sued jointly or separately." Edw. H. A.

Jacksonville, Ill.

Answer.—Medicines and medical attention are recognized as necessaries for wife and children, which the husband and father is bound to provide. Schouler's Dom. Rel. §§ 61, 411. The family must include all the members thereof, and there is no requirement, nor indeed possibility, that the proceeds of all expenses shall be equally divided among the members. Clothing, food and medicine are family expenses. Finn v. Rose, 12 Iowa, 565. The attendance of a physician must be as much a family expense as the medicine he orders for his patient. The wife is liable.

Query 24. [21 Cent. L. J. 323.] Section 4940 of Rev. Stat. of Mo. 1879, confers power upon cities of the fourth class, by ordinance, to tax merchants, peddlers, etc. The same section also provides for the levy and collecting of a license tax on certain classes of trades and avocations, but does not include peddlers. Query: Has a city of the fourth class power, by ordinance, to levy and collect a license tax *per diem*, that is, compelling peddlers to pay a certain amount for each day they shall follow their avocation within the city limits, and make the violation of the ordinance a misdemeanor punishable by fine, or should the ordinance be for the levy and collection of an *ad valorem* tax.

Bethany, Mo. X. Y.

Answer.—The power to tax peddlers is expressly given, but the mode of taxation is not prescribed. In such a case the city can adopt any mode of taxation which the legislalature could adopt. Am. U. Ex. Co. v. St. Joseph, 66 Mo. 675. So of course the city can impose an *ad valorem* tax. Can it impose a tax of any other nature—such for instance as is usually termed a license? While the constitution "enjoins a uniform rule in imposing taxes on property, it does not abridge the power of the legislature to provide revenue from other sources. It has also been held, that the power of the legislature to tax all professions is unquestioned the State might delegate the authority, but it should be done in clear and unmistakeable terms." Am. U. Ex. Co. v. St, Joseph, *supra*. In that case the City of St. Joseph imposed an *ad valorem* tax on the gross receipts of express companies. "Taxation of this kind is equal and uniform, if all persons engaged in the same business are taxed alike." *Idem*. A State law imposing a tax on incomes was held to be valid. The court says: "there are three classes of direct taxes; capitation, having effect solely on persons; *ad valorem*, having effect solely upon property, and income, having a mixed effect upon persons and property;" Glasgow v. Rowse, 43 Mo. 490. In other cases the Supreme Court makes no distinction between licenses and taxes, but has regarded licenses as falling under the taxing power. City of St, Louis v. Laughlin, 49 Mo. 559; City of St. Louis v. Steinberg, 69 Mo. 296. There is no requirement in the law that the license shall be for any certain time, as a limit as to time is no violation of the law. It is a matter left to the discretion of the city. The section expressly authorizes such cities to enforce their ordinances by fines, and such a law is valid. City of St. Louis v. Steinberg, *supra*. So we conclude that in Missouri cities of the fourth class can impose the tax in either mode suggested. S. S. M.

CORRESPONDENCE.

INTER-STATE ATTACHMENTS.

The following letter indicates the proper solution of the question stated in Vol. XXI, p. 521 of this Journal. There is a manifest need of legislation on the subject.

To the Editor of the Central Law Journal:

I have read the correspondence in the Journal on the subject of "Inter-State Garnishments and Exemption Laws" and think a statute of this State (Tennessee) contains the best solution of the trouble, It is this: "When the debtor and creditor are both non-residents of this State, and residents of the same State, the creditor shall not have attachment against the property of his debtor unless he swear that the property of his debtor has been fraudulently removed to this State to evade the process of law in the State of their domicil or residence."

Code of Tennessee (M. & V.'s Rev.) § 4163. Fictitious transfers, decoying property out of the State into another for the purpose of attaching same so as to obtain jurisdiction, &c., would undoubtedly be frauds upon the jurisdiction of the Court. See Timmons v. Garrison, 4 Humphreys (Tennessee) 148. W. B. SWANEY.

RECENT PUBLICATIONS.

MYER'S FEDERAL DECISIONS, VOLS. 8 AND 12.—Federal Decisions: Cases Argued and Determined in the Supreme, Circuit and District Courts of the United States. Arranged by William G. Myer. Vol. 8. Contracts — Conversion. Vol. 12. Crimes and Criminal procedure. St. Louis, Mo.: The Gilbert Book Company.

The profession will no doubt cordially welcome these additional volumes of this admirable work, which, for the value of the matter contained in it, and its excellent arrangement far surpasses every collection of a similar character which we have even seen. As the publication of this work progresses, we are more impressed with the merits of the plan adopted in the beginning, and the skill and fidelity with which it has thus far been worked out. One of the volumes now before us, exhausts, so far as the Federal courts can exhaust it, the great subject of the law of contracts. The arrangement of the cases is very good. They are classified under the following general heads: I. Contracts in General; What Constitutes a Contract; Parties. II. Kinds of Contracts. III. Consideration. IV. Validity. V. Construction and Interpretation. VI. Performance and Breach. VII. Alteration of Contracts. VIII. Contracts as Affected by the Statute of Frauds. IX. Right of Action, accrues when. X. Measure of Damages.

The twelfth volume is much larger and is equally well-arranged. The subject of the volume is subdivided into no less than thirty-five different heads, *viz.*, General Principles, Conspiracy, Counterfeiting and Forgery, Defrauding the Government, Crimes under Election Laws, Offences on the High Seas, Homicide, Violation of Internal Revenue Laws, Larceny, Offences by Officers, Polygamy, Offences Relating to the Post Office, Offences under Pension laws, Perjury, Receiving Stolen Property, Resisting an Officer, Treason, Miscellaneous Offences, Arrest, Preliminary Examination, Bail, Jurisdiction, Twice in Jeopardy, Grand Jury, Jury, Indictment, Miscellaneous Questions of Practice, New Trial and Arrest of Judgment

Felonies and Infamous Crimes, Principal and Accessory, Punishment, Insanity, Removal of Causes, Pardon, and Extradition.

The work of which these volumes constitute a part is of the most sterling merit and we can most sincerely commend it to the profession.

JETSAM AND FLOTSAM.

English barristers are exercised over the increasing tendency of modern judges to talk instead of listening to the argument, thus preventing anything like a consecutive presentation of the case. One observer, by careful note, found that of every ten minutes occupied by the hearing of a case, counsel were permitted to speak for four minutes and a half. The rest of the time was occupied by the observations of the law lords. Lord Kingsdown is reported to have said that never, till he was on the bench, did he know "the energy it requires to hold your tongue." Of another distinguished judge, the story goes that he asked to be reminded if he should err in this particular. The occassion soon came, and his chosen monitor, like Gil Blas, was faithful to the trust reposed in him. But the answer immediately came back, in a note handed down from the bench, "You—fool, don't you see I am trying to bring him to the point."—*Exchange.*

NATIONAL VERACITY.—Mr. Osborne Morgan, Q. C., replying to a correspondent, who drew his attention to his Honour Judge Horatio Lloyd's condemnation of the Welsh nation for perjury, writes: "I cannot help expressing my regret that my old friend Judge Horatio Lloyd has felt his duty to make such sweeping assertions as to the veracity of Welch witnesses. If I may venture to a borrow a phrase of Burke's, a man ought always to hesitate before preferring an indictment against a nation. My own experience, founded upon many years' practice in courts of justice, both English and Welsh, leads me, I regret to say, to the conclusion that a lamentable amount of perjury is daily committed in both. If I draw a distinction between the two, I should be disposed to say that, if a Welshman lies, he as often as not lies from good nature and to help a friend. When an Englishman lies, he generally lies to serve his own interests."—*London Law Times.*

"Why the devil did'nt you bring the man I sent you after?" asked the sheriff in Greensboro', Alabama, of his colored deputy. "Well, Mr. Jones, de reason why I didn't fotch him was case he wouldn't come." 'Would n't come! Why didn't you call the *posse comitatus* to help you?" "I know you told me dat, and when I ax de gentlemen 'bout Com Tatus, dey say he done gone—he wan't dar?"—*Washington Law Reporter.*

"My dear fellow," said an Indiana sheriff to his prisoner, "I must apologize to you for the sanitary condi of this jail. Several of the prisoners are down with the measles, but I assure you that it is not my fault." "Oh, no excuses," replied the prisoner, "it was my intention to break out as soon as possible, any way."—*Washington Law Reporter.*

MR. BRADLAUGH HAS TAKEN THE OATH in the form and manner prescribed by the Parliamentary Oaths Act, 1866, as amended by the Promissory Oaths Act, 1868, and the Speaker, "after a full consideration of what ought to be his conduct," has declined to give effect to the suggestion that "Mr. Bradlaugh should not be permitted to go though the form of taking the oath without an opportunity being afforded to the House of Commons of expressing its opinion upon the proceeding." It will be remembered that the late Speaker referred the question arising upon the Oaths Act to the decision of the House, which, after many intermediate inquiries and resolutions, ultimately declined to allow Mr. Bradlaugh either to take the oath or to make an affirmation. At first sight there may seem to have been a discrepancy between the course adopted by the two Speakers, but, in reality, this is not the case. When first elected in 1880, Mr. Bradlaugh claimed to affirm, not to take the oath, and the question which the late speaker referred to the House was the very substantial one whether Mr. Bradlaugh was, in the words of the 4th section of the Act of 1865, either "a person of the persuasion of the people called Quakers, or some other person for the time being by law permitted to make a solemn affirmation or declaration of an oath." This question the House practically relegated to the decision of a court of law, and the court (Clarke v. Bradlaugh, 29 W. R. 516, L. R. 7 Q. B. D. 38) decided it in the negative, although the House of Lords reversed this decision (31 W. R. 667, L. R. 8 App. Cas. 354), on the ground that the Crown alone could sue for the penalty under the Act of 1866. The question now arises whether a court of law can visit Mr. Bradlaugh with any penalties for taking the oath. We do not see how it can. The two Acts which regulate the taking of the oath nave been complied with in every detail of form, and, as might have been expected, they are absolutely silent as to any mode for examining a member on the *voir dire*, or for visiting him with penalties if he should turn out to have been an atheist at the time of taking the oath. Nor are we aware of any precedent for any legal proceeding being taken against a person who has taken an oath, though not entitled to take it. There still remains the technical difficulty that an atheist, though not one of the persons to whom the Parliamentary Oaths Act, as amended by the Promissory Oaths Act, applies, cannot be legally prevented from taking the oaths—a difficulty which Parliament may either solve by a measure on the lines of Lord Redesdale's Bill, disqualifying an atheist *eo nomine*, or by an Affirmation Bill, allowing all members to affirm.—*Solicitor's Journal* (London.)

EXTRADITION OF DEFAULTERS.—"The annual report of the banking department shows that there are ninety-two discount banks and twenty trust and guaranty companies within the State, all in good condition. In regard to the interesting subject of the prevention of defalcations and the extradtion of defaulters. Supt. Paine says: 'The sovereignty of a nation within its own territory is exclusive and absolute, and the necessity for extradition treaties arises from the fact that the penal laws of the country are of no effect outside of the jurisdiction. Crime is local, and, as a rule, can not be punished except in the country where it is perpetrated, for as a matter of theory it is an offense against the peace and dignity of a State, and can be punished only by the law of that State: and practically because of the difficulty of procuring evidence. Fugitives from justice, in their efforts to escape consequences of a certain offense, may flee into the territory of a foreign conntry. And the purpose of such treaties is to create reciprocal rights, whereby those who have thus fled may be surrendered by the authorities of the places in which they may be found, to the end that they may be dealt with in accordance with the law. Our government has no right, either by virtue of the constitution of the law of nations, to surrender fugitives from justice, and it has been the invariable rule in this country to grant extradition only where pledges of faith have been exchanged, and cases stated in which, subject to certain rules, an alleged

criminal may be sent back to a foreign government, the laws of which he is supposed to have violated. In the whole history of this country there has been but one exception to this rule.

"'The law of England recognizes no obligation on the part of the British government to surrender criminals accused of crime in foreign countries, in the absence of a treaty authorizing the same. And as our government has never, except as has been stated in one instance, recognized the theory of comity or international courtesy, there is no reason to believe that those countries with which we have no treaties, or partly satisfactory ones, will favor us.

"'There is no offense which causes greater demoralization to our commercial interests than fraudulent appropriation to their own use of property held by those who act in a fiduciary capacity. Our now existing treaty with Switzerland includes 'embezzlement by public officers, or by persons hired or salaried, to the detriment of their employers.' That the treaty with Great Britain should be amended to conform with the agreement with Switzerland is a duty of political morality.'

"The report in every respect is one of interest, some of Mr. Paine's researches into the history and precedents of extradition treaties having the impress of a scholarly interest in the work, and a careful digestion of the law and the facts.—*Albany Times.*

Any person desirous of inspecting the actual last will and testament of the immortal bard of Avon can do so by visiting Somerset House and paying a shilling. The visitor is conducted to a dimly-lighted room, in which this precious relic is preserved, and is not a little astonished to find it securely fixed in a series of frames protected by glass. The will remained for many years without any attempt being made to protect it from the wear to which it was subjected. Indeed the reference to the will during the period at which it was unprotected has slightly worn away the writing at the folds of the paper. It is a remarkable fact that for every Englishman who visits Somerset House to inspect it, there are at least two Americans. The will has been reproduced in *fac simile* on two or three occasions at distant intervals, one of the last copies being taken in 1864, when a *fac simile* (now out of print) was published at six shillings. *Fac similes* have for many years past been exceedingly scarce, and a sovereign or more has been paid for good copies. Messrs. Cassell & Co. have now reproduced the will in a form which will enable every person to possess it, for they will issue a *fac simile* copy with Part I of "Cassell's Illustrated Shakespeare," to be published on the 26th inst., the price of the part, including the will, being but 7d. This new *fac simile* of the will has been very carefully executed, its permanent value being greatly enhanced by its being printed on paper of antique style, and in ink similar in color to that of the original document.—*Law Times.*

THE LINCOLN'S INN GATE HOUSE.—Steps are being taken to preserve the Old Gate House and Old Square, Lincoln's Inn, now threatened with demolition. The Society of Antiquaries have adopted a memorial to the benchers of the Honorable Society of Lincoln's Inn pointing out the interesting historical associations of this ancient structure, and urging that it be allowed to remain in its present state, as one of the few remaining monuments of the early part of the sixteenth century now existing in London. It was in the Gate House, or the chambers adjoining it, where lived Secretary Thurloe, the friend of Oliver Cromwell and the associate of Milton, and in his rooms were discovered the papers known as the Thurloe State papers Samuel Morland, to whom we owe the earliest series of experiments with "steam power as a means of raising water," and, further, with the invention of the speaking trumpet, a calculating machine, and an improved form of fire-engine, also lived close to the Gate House. Here also William Murray, aftewards Lord Mansfield, occupied chambers, as likewise the great Sir Matthew Hale. In the chambers on the south side of Old Square, adjacent, lived Lenthall, afterwards Speaker of the Long Parliament, and close by Thomas Wentworth and William Prynne occupied rooms. The Gate House bears the date of erection 1518, and is a fine specimen of the brickwork of the period.—*Law Journal* (London.)

DID NOT KNOW WHERE SHE WOULD GO TO.—At a trial over which Mr. Justice Maule presided, great doubt was expressed as to whether a little girl who has been called as a witness knew the nature of an oath. To silence controversy, the judge asked the child if she knew where she would go to if she told a lie. The witness meekly replied, "No, sir." To which the judge added, "A very sensible answer. Neither do I know where you will go to. You may swear the witness."—*Whitehall Review*, (London).

THE PERSONALITY OF COUNSEL.—The prolific brood of judicial decisions which pour from the press as fast as the diligent reader can run his eye along the lines, inevitably tends to reduce the value of any one decision as a fixed element in jurisprudence, while it increases the value of the whole body of the case law as materials for controversy. There never was a time when an ignorant and ill-read lawyer was so hard put to it to find on any controvertible point a safe authority on which he could safely rest. But on the other hand, never heretofore has it been so easy for an intelligent and well-read lawyer to master any controvertible question and prepare to maintain himself with sound reasoning and acute and proper distinctions. The force of the lawyer, which used to rest to a considerable strength on oratory with a jury and a book with the Judge, now rests rather on hard facts with the jury and close logic with the judge. This, much as those accustomed to old processes may regret it, and painful as may be the effort of some to adapt themselves to it, is a wholesome change. It enhances the value of the mental force of counsel, gives more influence to his actual knowledge of the law as distinguished from his memory of what is in the books, and compels competition in reasoning which thus becomes the life of the bar. What a code is wanted for, is not to settle in advance at one swoop of legislative declaration, those mooted points of justice which remain undetermined, but to sift out and state separately what is fixed and what every one ought to concede to be fixed; so that the premises of argument on new questions would afford a firm starting point, and that debate on nondebatable objections might be ignored.—*Daily Register.*

THE GREAT MOTHER'S BIG WAR BONNET.—Some difficulty was experienced at the Regina trials in making the Indian prisoners understand the legal terms in which their offenses were set forth. For instance, no term could be found to convey to the untutored mind the idea of the Queen's crown, which he was charged with conspiring against. This was explained to One Arrow as being "the Great Mother's big war bonne with feathers in it."—*Montreal Legal News.*